

SENATE BILL 421  
By Haynes

AN ACT to amend Tennessee Code Annotated, Title 48,  
relative to enacting the "Tennessee Revised  
Limited Liability Company Act."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 48, is amended by adding the  
following sections thereto:

**SECTION 48-249-101.**

Chapters 249 through 258 of this title shall be known and may be cited as the  
"Tennessee Revised Limited Liability Company Act".

**SECTION 48-249-102.**

As used in chapters 249 through 258 of this title, the terms set forth in this section have  
the meanings indicated, unless the context otherwise requires:

(1) "Act" means the "Tennessee Revised Limited Liability Company Act" set forth  
at chapters 249 through 258 of this title.

(2) "Articles" or "articles of organization" means in the case of an LLC formed  
under this Act, articles of organization, articles of amendment, articles of correction,  
certificates of merger, and all similar documents required to be filed with any of the  
foregoing as part of the formation and continuation of an LLC. In the case of a foreign  
LLC, "articles" or "articles of organization" includes all documents serving a similar  
function required to be filed with the secretary of state or other state office of the foreign  
LLC's jurisdiction of formation.

(3) “Business” includes every trade, occupation, profession, investment activity, and other lawful purpose for gain or the preservation of assets, whether or not carried on for profit.

(4) “Code” means the Internal Revenue Code of 1986, as amended, including all successor provisions to the sections referred to in this Act.

(5) “Director” means an individual, whether or not a member of a director-managed LLC, who is vested with authority as a director under § 48-252-101(c).

(6) “Director-managed LLC” means an LLC formed under this Act that is so designated in its articles.

(7) “Distribution” means a direct or indirect transfer of money or other property (except for the issuance by an LLC of its own membership interests or financial rights) with or without consideration, or an incurrence or issuance of indebtedness (whether directly or indirectly, including through a guaranty) by an LLC to or for the benefit of any of its members or holders of financial rights, as applicable, in respect of membership interests or financial rights. A distribution may be in the form of an interim distribution under § 48-251-105 or a liquidation distribution under § 48-254-120; a purchase, redemption, or other acquisition of its membership interests or financial rights; a distribution of indebtedness (which includes the incurrence of indebtedness, whether directly or indirectly, including through a guaranty, for the benefit of the members or holders of financial rights, as applicable) or otherwise. The term “distribution” shall not include amounts paid to members, holders of financial rights, managers or directors constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(8) “Entity” includes the following, whether foreign or domestic: for profit and not-for-profit limited liability companies; for profit and not-for-profit corporations; for profit and not-for-profit unincorporated associations; real estate investment trusts; business trusts or associations; estates; general partnerships, limited partnerships, registered or unregistered limited liability partnerships, limited liability limited partnerships, or similar organizations; trusts; joint ventures; and two (2) or more persons having a joint or common economic interest; and also includes local, municipal, state, United States, and foreign governments.

(9) “Family LLC” means an LLC in which two (2) or more members of the same family hold, in the aggregate, at least fifty percent (50%) of the financial rights in the LLC. A “member of the same family” as used in the preceding sentence means, with respect to any member or holder of financial rights of the LLC:

(A) The spouse or former spouse of the member or holder of financial rights, as applicable;

(B) Any ancestor or lineal descendant of the member or holder of financial rights, as applicable, or of the spouse or former spouse of the member or holder of financial rights, as applicable;

(C) Any brother or sister of the member or holder of financial rights, as applicable;

(D) The descendants of the individuals described in subsection (C);

(E) Any spouse of any individual described in subsections (B), (C) or (D);

or

(F) Any lineal descendant of a spouse from a previous marriage of the member or holder of financial rights or any individual described in subsections (B), (C) or (D).

For the purpose of determining a “member of the same family,” (i) relationship by adoption shall be treated the same as relationship by blood, and (ii) financial rights held by any person who is related (within the meaning of §§ 267(b) and 707(b) of the Code) to the persons listed above shall be deemed to be actually owned by such persons.

(10) “Financial rights” means a member’s or holder’s rights to:

- (A) Share in profits and losses as provided in § 48-251-104;
- (B) Share in and receive distributions as provided in § 48-251-105;
- (C) Receive liquidation distributions as provided in § 48-254-120; and
- (D) Assign the financial rights described in subsections (A), (B) and (C),

as provided in § 48-253-107.

(11) “Foreign LLC” means a limited liability company that is formed under laws of a jurisdiction other than the laws of this state, or under the laws of any foreign country.

(12) “Governance rights” means a right to vote on one (1) or more matters, all a member’s other rights as a member in the LLC other than financial rights, and the right to assign the governance rights described in this subsection.

(13) “Holder of financial rights” or “holder” means a person, other than a member, owning any financial rights in an LLC. A holder of financial rights may acquire its financial rights either by assignment, as provided in § 48-253-107, or by original issuance from the LLC as provided in § 48-251-103(a).

(14) “LLC” (sometimes referred to as a “domestic LLC”) means a limited liability company formed under this Act or, where expressly indicated, under the Prior Act.

(15) “LLC documents” means either or both of:

- (A) An LLC’s articles; and
- (B) If the LLC has an operating agreement, whether written or oral, it’s operating agreement.

(16) “Majority vote” means with respect to a vote of the members, managers, or directors, as applicable,

(A) If voting on a per capita basis, a majority in number of the members, managers, or directors, as applicable, entitled to vote on a specific matter, or

(B) If the voting is determined otherwise under the LLC documents, a majority of the voting interest of the members, managers, or directors, as applicable, entitled to vote on a specific matter as determined under the LLC documents.

(17) “Manager” means a person, whether or not a member of manager-managed LLC, who is vested with authority as a manager under § 48-252-101(b).

(18) “Manager-managed LLC” means an LLC formed under this Act that is so designated in its articles.

(19) “Member” means a person that has been admitted to an LLC as a member as provided in § 48-253-101. With respect to a foreign LLC, “member” means an individual or entity recognized under the laws of the jurisdiction of organization of the foreign LLC as a member of the foreign LLC.

(20) “Member-managed LLC” means an LLC formed under this Act other than a manager-managed or director-managed LLC.

(21) “Membership interest” means a member’s interest in an LLC which shall consist of the member’s financial rights and governance rights.

(22) “Officer” means an individual, whether or not a member of an LLC, who is vested with authority as an officer under § 48-252-101(e).

(23) “Operating agreement” means an agreement described in § 48-250-103(a) among the members of an LLC. The term includes amendments to and restatements of the agreement.

(24) "Person" means an individual or an entity.

(25) "Prior Act" means the Tennessee Limited Liability Company Act set forth at chapters 201-248 of title 48 of the Tennessee Code Annotated.

(26) "Principal executive office" means the office (in or out of this state) so designated in the articles or annual report where the principal executive offices of a domestic or foreign LLC are located.

(27) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(28) "Professional limited liability company" or "professional LLC" or "PLLC" has the meaning set forth at chapter 248 of title 48 of the Tennessee Code Annotated.

(29) "Record" means information that is inscribed in a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(30) "Registered office" means the place in this state designated in the articles as the registered office of the LLC.

(31) "Representative" means, as to a foreign LLC, a director, manager, officer, employee or other agent of a foreign LLC.

(32) "Secretary of state" means the person who holds the office of secretary of state of this state. A filing with the secretary of state occurs by a proper filing with the office of the secretary of state.

#### **SECTION 48-249-103.**

(a) Notice under this Act or the LLC documents to an LLC or a foreign LLC (authorized to transact business in this state), or by an LLC to its managers, directors, officers, employees, agents, members and holders of financial rights, as applicable, shall be in writing except that oral notice is effective if it is reasonable under the circumstances. Such notice may be communicated in person; by telephone, telegraph,

teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by publication in a newspaper of general circulation, or by radio, television, or other form of public broadcast communication, in the county where the principal executive office of the LLC is or was last located or in such other geographic areas as may be required under the LLC documents.

(b) Written notice by a domestic LLC to its managers, directors, officers, employees, agents, members and holders of financial rights, as applicable, if in a comprehensible form, is effective when mailed, if mailed postpaid and correctly addressed to the recipient's address shown in the LLC's current records.

(c) Written notice to a domestic or foreign LLC (authorized to transact business in this state) may be addressed to its registered agent at its registered office or to the LLC or its secretary at its principal executive office shown in its most recent annual report or, in the case of a foreign LLC that has not yet delivered an annual report, in its application for a certificate of authority.

(d) Except as provided in subsection (b), written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Five (5) days after its deposit in the United States mail, if mailed correctly addressed and with first class postage affixed thereon;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

(4) Twenty (20) days after its deposit in the United States mail, as evidenced by the postmark if mailed correctly addressed, and with other than first class, registered or certified postage affixed.

(e) Oral notice is effective when communicated if communicated in a comprehensible manner.

(f) Notice by publication or public broadcast as provided in subsection (a) is effective upon publication or broadcast, as applicable.

(g) Notwithstanding the provisions of this section, if another provision of this Act prescribes notice requirements for particular circumstances, those requirements shall govern.

#### **SECTION 48-249-104.**

(a) Every LLC formed under this Act has the purpose of engaging in any lawful business unless a more limited purpose is set forth in its LLC documents.

(b) An LLC engaging in a business that is subject to regulation under another statute of this state may form under or elect to be governed by this Act only if permitted by, and subject to all limitations of, the other statute.

(c) The LLC has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power to:

(1) Sue and be sued, complain and defend in its LLC name;

(2) Make and amend an operating agreement not inconsistent with its articles or with the laws of this state, for managing the business and regulating the affairs of the LLC;

(3) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;



(4) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of, or grant a security interest in, all or any part of its property;

(5) Purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, or grant a security interest in; and deal in and with shares or other interests in, or obligations of, any other entity;

(6) Make contracts (including without limitation contracts of guaranty and suretyship), incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other rights or securities of, or other interests in, the LLC), and secure any of its obligations or those of any other person by mortgage, pledge of, or security interest in, any of its property;

(7) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(8) Be a promoter, partner, member, shareholder, associate, trustee, or manager of any partnership, joint venture, trust, or other entity;

(9) Conduct its business, locate offices, and exercise the powers granted by this Act within or without this state;

(10) Elect or appoint directors, managers, officers, employees, and agents of the LLC, as applicable, define their duties, fix their compensation, lend them money and credit, and guarantee debt on their behalf;

(11) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, and retirement or welfare benefit or incentive plans for any or all of the current or former members, directors, managers, officers, employees, and agents of the LLC or any of its subsidiaries;

(12) Make donations for the public welfare or for charitable, scientific or educational purposes;

(13) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the LLC;

(14) Procure for its benefit insurance on the life of any of its directors, managers, officers or employees, to insure the life of any member or holder of financial rights for the purpose of acquiring at the member's or the holder's death the membership interest or financial rights owned by such member or holder of financial rights, as applicable, and to continue such insurance after the relationship terminates;

(15) Accept gifts, devises, and bequests subject to any conditions or limitations contained in such gift, devise, or bequest so long as such conditions or limitations are not contrary to any provisions of this Act or the purposes for which the LLC is formed;

(16) Accept contributions under § 48-251-101; and

(17) Have and exercise all other powers necessary or convenient to affect any or all of the business purposes for which the LLC is formed.

#### **SECTION 48-249-105.**

(a) Except as provided in subsection (b), the validity of an LLC's action may not be challenged on the ground that the LLC lacks or lacked the power to act.

(b) An LLC's power to act may be challenged in a proceeding by:

(1) A member against the LLC to enjoin the act;

(2) The LLC, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, manager, employee, agent, or member of the LLC, as applicable; or

(3) The attorney general and reporter under § 48-254-117.

(c) In a member's proceeding under subsection (b)(1) to enjoin an unauthorized LLC act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss suffered by the LLC or another party because of enjoining the unauthorized act.

**SECTION 48-249-106.**

(a) An LLC name:

(1) Must contain the words "limited liability company," or the abbreviation "L.L.C." or "LLC," or words or abbreviations of like import in another language; provided, that they are written in roman characters or letters; and provided further, that, in the case of a foreign LLC, the name may contain, in lieu of the foregoing, the designations allowed by the jurisdiction in which the foreign LLC was formed or formed. An organization formed pursuant to chapter 248 of this title must contain the words or the abbreviation as required by such chapter. Notwithstanding the foregoing, the name of an LLC or foreign LLC must not contain the word "corporation" or "incorporated" or an abbreviation of either or both these words; and

(2) May not contain language stating or implying that the LLC:

(A) Transacts or has the power to transact any business for which authorization in whatever form and however denominated is required under the laws of this state, unless the appropriate commission or officer has granted such authorization and certifies that fact in writing;

(B) Is formed as, affiliated with, or sponsored by, any fraternal, veterans', service, religious, charitable, or professional organization,

unless that fact is certified in writing by the organization with which affiliation or sponsorship is claimed;

(C) Is an agency or instrumentality of, affiliated with or sponsored by the United States or any state thereof or a subdivision or agency thereof, unless such fact is certified in writing by the appropriate official of the United States or the state or subdivision or agency thereof to the secretary of state; or

(D) Is formed for a purpose other than that permitted by § 48-249-104 and its LLC documents.

(b) Except as authorized by subsection (c), an LLC name must be distinguishable upon the records of the secretary of state from:

(1) The LLC name of an LLC formed or, in the case of a foreign LLC, authorized to do business in this state under this Act or the Prior Act;

(2) An LLC name reserved or registered under § 48-249-107 or § 48-249-108 or under § 48-207-102 or § 48-207-103 of the Prior Act;

(3) The corporate name or assumed corporate name of a corporation incorporated or authorized to transact business in this state;

(4) A corporate name or an assumed corporate name reserved or registered under § 48-14-102 or § 48-14-103;

(5) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(6) A limited partnership name of a limited partnership formed under the laws of this state, if the use of such name is evidenced by a filing at the office of the secretary of state, or a limited partnership name reserved under the law of

this state, or a limited partnership name of a limited partnership registered as a foreign limited partnership in this state; and

(7) A partnership name of a registered limited liability partnership organized under the laws of this state, or a foreign registered limited liability partnership, or a reserved name of a registered limited liability partnership or foreign registered limited liability partnership under § 61-1-1003(d). A registered limited liability partnership includes either a general or limited partnership.

(c) An LLC may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the indistinguishable name applied for if:

(1) The other LLC (including, without limitation any LLC formed or, in the case of a foreign LLC, authorized to do business in this state under the Prior Act), corporation, limited partnership or other entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to waive its reservation or change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying LLC;

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state; or

(3) The other LLC, corporation, limited partnership or other entity is under common control with the LLC; consents to the use in writing; and both the other corporation, limited partnership or other entity and the LLC consent in a form satisfactory to the secretary of state to use the same registered agent.

(d) An LLC or a foreign LLC authorized to transact business or applying for a certificate of authority to transact business may elect to adopt an assumed name that complies with the requirements of subsections (a)-(c), except that such name need not contain the designations contained in subsection (a)(1).

(1) As used in this Act, “assumed name” means any name used by the LLC, other than the LLC’s true name, except that the following shall not constitute the use of an assumed name:

(A) The identification by an LLC of its business with a trademark or service mark of which it is the owner or licensed user; and

(B) The use of a name of a division, not separately formed and not containing the words “limited liability company” or an abbreviation of such words; provided, that the LLC’s name is also clearly disclosed.

(2) Before transacting any business in this state under an assumed name or names, the LLC shall, for each assumed name, pursuant to a duly authorized resolution, execute and file in accordance with §§ 48-258-105 and 48-258-107, an application setting forth:

(A) The true LLC name;

(B) The state or country under the laws of which it is formed;

(C) That it intends to transact business under an assumed name;

and

(D) The assumed name which it proposes to use.

(3) The right to use an assumed name shall be effective for five (5) years from the date of filing by the secretary of state. An LLC may reserve or use no more than five (5) assumed names during the same period.

(4) An LLC may renew the right to use its assumed name or names, if any, within the two (2) months preceding the expiration of such right, for a period of five (5) additional years, by filing an application to renew each assumed name and paying the renewal fee as prescribed by § 48-258-107(a).

(e) Any LLC or foreign LLC may, pursuant to a duly authorized resolution, change or cancel any or all of its assumed names by executing and filing, in accordance with §§ 48-258-105 and 48-258-107, an application setting forth:

- (1) The true LLC name;
- (2) The state or country under the laws of which it is formed;
- (3) That it intends to cease transacting business under an assumed name by changing or canceling it;
- (4) The assumed name to be changed from or cancelled; and
- (5) If the assumed name is to be changed, the assumed LLC name which the LLC proposes to use.

(f) Upon the filing of an application to change an assumed name, the LLC shall have the right to use such assumed name for the period authorized by subsection (d).

(g) The right of a foreign or domestic LLC to use an assumed name shall be cancelled by the secretary of state if:

- (1) The LLC fails to renew an assumed name;
- (2) The LLC has filed an application to change or cancel an assumed name;
- (3) A domestic LLC has been dissolved; or
- (4) A foreign LLC has had its certificate of authority to transact business in this state revoked.

(h) Nothing in this section, or in § 48-249-107 or § 48-249-108, shall abrogate or limit the law as to unfair competition or unfair trade practice, or derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect trade names and trademarks.

**SECTION 48-249-107.**

(a) A person may reserve the exclusive use of an LLC name, including an assumed name, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the LLC name applied for meets the requirements of § 48-249-106 and is available, the secretary of state shall reserve the name for the applicant's exclusive use for a four (4) month period. Upon the expiration of the four (4) month period, the same or any other party may apply to reserve the same name.

(b) The owner of a reserved LLC name, including an assumed name, may transfer the reservation to another person by delivering to the secretary of state a notice of the transfer signed by the owner that states the name and address of the transferee.

(c) The reservation of a specific name may be cancelled by filing with the secretary of state a notice, executed by the applicant or transferee, specifying the reserved name to be cancelled and the name and address of the applicant or transferee.

**SECTION 48-249-108.**

(a) A foreign LLC may register its name, or an assumed name under which it transacts business, or its name with any addition pursuant to § 48-249-106(a), if the name is distinguishable upon the records of the secretary of state as required by § 48-249-106(b).



(b) A foreign LLC registers its name, or its assumed name, or its name with any addition pursuant to § 48-249-106(a), by delivering to the office of the secretary of state for filing an application:

(1) Setting forth its name, its assumed name, or its name with any addition pursuant to § 48-249-106(a), the state or country and date of its organization, and a brief description of the nature of the business in which it is engaged; and

(2) Accompanied by a certificate of existence (or a document of similar import) from the state or country of organization, bearing a date that is not more than one (1) month prior to the date the application is filed in this state.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application and until the end of the calendar year in which such registration occurs.

(d) A foreign LLC whose registration is effective may renew it for successive years by delivering to the office of the secretary of state for filing a renewal application that complies with the requirements of subsection (b) between October 1 and December 31 of the year prior to the year for which the renewal will be effective.

(e) A foreign LLC whose registration is effective may thereafter qualify as a foreign LLC under that name or consent in writing to the use of that name by an LLC thereafter formed under this Act or by another foreign LLC thereafter authorized to transact business in this state. The registration terminates when the domestic LLC is formed or the foreign LLC qualifies or consents to the qualification of another foreign LLC under the registered name.

#### **SECTION 48-249-109.**

(a) Each domestic and foreign LLC must continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be an individual who resides in this state, a domestic corporation, a not-for-profit domestic corporation, a domestic LLC or a domestic registered limited liability partnership, or a foreign corporation, a not-for-profit foreign corporation, a foreign LLC or a foreign registered limited liability partnership, in each case authorized to transact business in this state. The registered agent must maintain a business office that is identical with the registered office.

(b) If a registered agent resigns or is unable to perform such agent's duties, the domestic or foreign designating LLC shall promptly designate another registered agent to the end that it shall at all times have a registered agent in this state.

**SECTION 48-249-110.**

(a) A domestic or foreign LLC may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(1) The name of the LLC;

(2) If the current registered office is to be changed, the street address of the new registered office and the zip code for such office and the county in which the office is located;

(3) If its current registered agent is to be changed, the name of its new registered agent; and

(4) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of such registered agent's business office, such registered agent may change the street address of the registered office of any domestic or foreign LLC for which such registered agent is the registered agent by notifying the LLC in writing of the change and signing (either manually or in facsimile) and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (a) and recites that the LLC has been notified of the change.

**SECTION 48-249-111.**

(a) A registered agent of a domestic or foreign LLC may resign such agent's agency appointment by signing and filing with the secretary of state an original statement of resignation accompanied by such agent's certification that such agent has mailed a copy thereof to the principal executive office of the LLC by certified mail. The statement may include a statement that the registered office is also discontinued.

(b) Effective Date of Resignation. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement is filed by the secretary of state.

**SECTION 48-249-112.**

(a) A domestic or foreign LLC's registered agent is the LLC's agent for service of process, notice, or demand required or permitted by law to be served on the LLC.

(b) Whenever a domestic or foreign LLC authorized to do business in this state fails to appoint or maintain a registered agent in this state, whenever its registered agent cannot be found with reasonable diligence, whenever a foreign LLC shall transact business or conduct affairs in this state without first obtaining a certificate of authority from the secretary of state, or whenever the certificate of authority of a foreign LLC shall

have been cancelled or revoked, then the secretary of state shall be an agent of such LLC upon whom any such process, notice or demand may be served.

(c) Whenever a domestic or foreign LLC authorized to do business in this state is an employer within the meaning of the Workers' Compensation Law and such LLC is, for the purpose of such Workers' Compensation Law, self-insured or a part of a self-insurance pool as provided in title 50, chapter 6, part 4, such LLC shall, for workers' compensation actions only, be required to appoint the commissioner of commerce and insurance and such commissioner's chief deputy, or their successors, as its true and lawful attorneys upon either of whom all lawful process in any such action or legal proceeding against it may be served as is required of insurance companies by the provisions of § 56-2-103.

(d) This section does not prescribe the only means, or necessarily the required means, of service on a domestic or foreign LLC.

#### **SECTION 48-249-113.**

(a) Service on the secretary of state, when the secretary of state is an agent for a domestic or foreign LLC as provided in § 48-249-112(b), of any process, notice, or demand shall be made by delivering to the office of the secretary of state the original and one (1) copy of such process, notice, or demand, duly certified by the clerk of the court in which the suit or action is pending or brought, together with the proper fee. A statement which identifies which of the grounds, as listed in § 48-249-112(b), for service on the secretary of state is applicable must be included. The office of the secretary of state shall endorse the time of receipt upon the original and copy and immediately shall send the copy, along with a written notice that service of the original was also made, by registered or certified mail, with return receipt requested, addressed to such LLC at its registered office or principal executive office as shown in the records on file in the

secretary of state's office or as shown in the official registry of the state or country in which such LLC is formed.

(b) The refusal or failure of such LLC to accept delivery of the registered or certified mail provided for in subsection (a), or the refusal or failure to sign the return receipt, shall not affect the validity of such service; and any such LLC refusing or failing to accept delivery of such registered or certified mail shall be charged with knowledge of the contents of any process, notice, or demand contained therein.

(c) When the registered or certified mail return receipt is received by the office of the secretary of state or when a domestic or foreign LLC refuses or fails to accept delivery of the registered or certified mail and it is returned to the office of the secretary of state, the office of the secretary of state shall forward the receipt or such refused or undelivered mail to the clerk of the court in which the suit or action is pending, together with the original process, notice, or demand, a copy of the notice the secretary of state sent to the defendant LLC and the secretary of state's affidavit setting forth the secretary of state's compliance with this section. Upon receipt thereof, the clerk shall copy the affidavit on the rule docket of the court and shall mark it, the receipt or refused or undelivered mail, and the copy of notice as of the day received and place them in the file of the suit or action where the process and pleadings are kept, and such receipt or refused or undelivered mail, affidavit, and copy of notice shall be and become a part of the technical record in the suit or action, and thereupon service on the defendant shall be complete. Service made under this section shall have the same legal force and validity as if the service had been made personally in this state.

(d) Subsequent pleadings or papers permitted or required to be served on such defendant domestic or foreign LLC may be served on the secretary of state as agent for such defendant LLC in the same manner, at the same cost and with the same effect as

process, notice, or demand are served on the secretary of state as agent for such defendant LLC under this section.

(e) No appearance shall be required in the suit or action by the defendant domestic or foreign LLC nor shall any judgment be taken against the defendant domestic or foreign LLC in less than one (1) month after the date service is completed under this section.

(f) The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, which record shall include the time of such service and the secretary of state's action with reference thereto.

#### **SECTION 48-249-114.**

(a)

(1) Except as provided in subsections (d) and (f), a member, holder of financial rights, director, manager, officer, employee or other agent of an LLC does not have any personal obligation and is not otherwise personally liable for the acts, debts, liabilities, or obligations of the LLC whether such arise in contract, tort or otherwise.

(2) A member, holder of financial rights, director, manager, officer, employee or other agent of an LLC does not have any personal obligation and is not otherwise personally liable for the acts or omissions of any other member, holder of financial rights, manager, officer, director, employee or other agent of the LLC.

(3) Notwithstanding the provisions of subsections (a)(1) and (a)(2), a member, holder of financial rights, director, manager, officer, employee or other

agent may become personally liable by reason of such person's own acts or conduct.

(b) The limited liability described in subsection (a) continues in full force regardless of any dissolution, winding up, and termination of an LLC.

(c) A member, holder of financial rights, director, manager, officer, employee or other agent of an LLC is not a proper party to a proceeding by or against an LLC except:

(1) Where the object of the proceeding is to enforce such person's right against or liability to the LLC;

(2) In a derivative action brought pursuant to this Act or the LLC documents; or

(3) Where the proceeding asserts personal liability of such member, holder of financial rights, director, manager, officer, employee or other agent as described in subsection (a)(3).

(d) Notwithstanding any other provision of this Act to the contrary, each person, member, or employee required to collect, truthfully account for, and pay over to the department of revenue any tax collected from the customers of an LLC shall be personally liable for such taxes in the same manner as responsible persons of a corporation under the provisions of § 67-1-1443.

(e) The failure of an LLC to observe the usual LLC formalities or requirements relating to the exercise of its LLC powers or management of its business is not a ground for imposing personal liability on the members, holders of financial rights, managers, directors, officers, employees or other agents of the LLC.

(f)

(1) Notwithstanding anything to the contrary in this section, the articles may provide that one (1) or more specifically identified members, as named in

the articles, will be personally liable for all of the debts, obligations and liabilities of the LLC and, if so, each such specifically identified member shall be liable to the same extent as a general partner in a general partnership; provided, that:

(A) In order to be effective, each member so identified must sign the articles, or an amendment to the articles containing this provision; and

(B) Each such member shall continue to be personally liable for debts, obligations and liabilities of the LLC until the articles are amended to strike such member's name, but the amendment must be signed by a person authorized to bind the LLC under § 48-252-102 and any remaining members who continue to be identified in the articles as being personally liable for the debts, obligations and liabilities of the LLC.

(2) A member who is identified in the articles as being personally liable has the power, but not necessarily the right, to file an amendment to the articles stating that such member will not be liable for any future debts, obligations and liabilities of the LLC; provided, that such an amendment to the articles shall be effective immediately except with respect to parties that have reasonably relied upon the articles naming such person as individually liable for the debts, obligations and liabilities of the LLC.

(3) An amendment to the articles filed pursuant to subsections (f)(1) and (2) is not effective against such parties reasonably relying upon such articles until the passage of ninety (90) days from the filing of the amendment to the articles. Notwithstanding the preceding, such member or former member will continue to be liable for all debts and obligations of the LLC incurred by the LLC while such member assumed liability.

#### **SECTION 48-249-115.**



(a) As used in this § 48-249-115, unless the context otherwise requires:

(1) “Expenses” include without limitation counsel fees;

(2) “Liability” means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding;

(3) “LLC” includes any domestic or foreign LLC and any domestic or foreign predecessor of an LLC in a merger or other transaction in which the predecessor’s existence ceased upon consummation of the transaction;

(4)

(A) “Official capacity” means:

(i) With respect to a director in a director-managed LLC, the position of director;

(ii) With respect to a manager in a manager-managed LLC, the position of manager;

(iii) With respect to a member in a member-managed LLC, a member who took an action of management as a member; and

(iv) With respect to a person in a capacity not described in subsection (a)(4)(A)(i), (ii), or (iii), the elective or appointive office or position held by an officer, member of a committee of the board of directors or member of a committee of the managers or members, or the employment or agency relationship undertaken by an employee or agent on behalf of the LLC.

(B) “Official capacity” does not include service for any other foreign or domestic corporation, LLC, partnership, joint venture, trust, employee benefit plan, or other enterprises;

(5) “Party” includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding;

(6) “Proceeding” means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal;

(7) “Responsible person” means an individual who is or was a director of a director-managed LLC, a manager of a manager-managed LLC, or a member of a member-managed LLC or an individual who, while a director of a director-managed LLC, a manager of a manager-managed LLC, or a member of a member-managed LLC, is or was serving at the LLC’s request as a director, manager, director, officer, partner, trustee, employee, or agent of another foreign or domestic LLC, corporation, partnership, joint venture, employee benefit plan or other enterprise. A director of a director-managed LLC, a manager of a manager-managed LLC, or a member of a member-managed LLC is considered to be serving an employee benefit plan at the LLC’s request if the director’s, manager’s, or member’s duties to the LLC also impose duties on, or otherwise involve services by, the director, manager, or member to the plan or to participants in or beneficiaries of the plan. “Responsible Person” includes, unless the context requires otherwise, the estate or personal representative of a responsible person; and

(8) “Special legal counsel” means counsel who has not represented the LLC or a related LLC, or a director, manager, member of a committee of the board of directors, member of a committee of the managers, member of a committee of the members, officer, agent or employee, whose indemnification is in issue.

(b)

(1) Except as provided in subsection (d), an LLC may indemnify an individual made a party to a proceeding because such individual is or was a responsible person against liability incurred in the proceeding if the individual:

(A) Acted in good faith; and

(B) Reasonably believed:

(i) In the case of conduct in such individual's official capacity with the LLC, that such individual's conduct was in its best interest; and

(ii) In all other cases, that such individual's conduct was at least not opposed to its best interests; and

(C) In the case of any criminal proceeding, had no reasonable cause to believe such individual's conduct was unlawful.

(2) A responsible person's conduct with respect to an employee benefit plan for a purpose such person reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (b)(1)(B).

(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the responsible person did not meet the standard of conduct described in this section.

(4) Except as provided in subsection (e), an LLC may not indemnify a responsible person under this section:

(A) In connection with a proceeding by or in the right of the LLC in which the responsible person was adjudged liable to the LLC; or

(B) In connection with any other proceeding charging improper personal benefit to such responsible person, whether or not involving action in such person's official capacity, in which such person was adjudged liable on the basis that personal benefit was improperly received by such person.

(c) An LLC shall indemnify a responsible person who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the person was a party because the person is or was a responsible person of the LLC against reasonable expenses incurred by the person in connection with the proceeding.

(d)

(1) An LLC may pay for or reimburse the reasonable expenses incurred by a responsible person who is a party to a proceeding in advance of final disposition of the proceeding if:

(A) The responsible person furnishes the LLC a written affirmation of good faith belief that the person has met the standard of conduct described in subsection (b);

(B) The responsible person furnishes the LLC a written undertaking, executed personally or on such person's behalf, to repay the advance if it is ultimately determined that the person is not entitled to indemnification; and

(C) A determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

(2) The undertaking required by subsection (d)(1)(B) must be an unlimited general obligation of the responsible person but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section shall be made in the manner specified in subsection (f).

(e) A responsible person of the LLC who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification if it determines:

(1) The responsible person is entitled to mandatory indemnification under subsection (c), in which case the court shall also order the LLC to pay the responsible person's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) The responsible person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the person met the standard of conduct set forth in subsection (b)(1) or was adjudged liable as described in subsection (b)(4), but if the person was adjudged so liable the person's indemnification is limited to reasonable expenses incurred.

(f)

(1) Except as provided in subsection (e), an LLC may not indemnify a responsible person under subsection (b) unless authorized in the specific case after a determination has been made that indemnification of the responsible person is permissible in the circumstances because the person has met the standard of conduct set forth in subsection (b)(1).

(2) The determination shall be made:

(A) By the board of directors in the case of a director-managed LLC, by the managers of a manager-managed LLC, or by the members of a member-managed LLC, as applicable, by majority vote of a quorum consisting of directors, managers or members, as applicable, not at the time parties to the proceeding;

(B) If a quorum cannot be obtained under subsection (f)(2)(A), by majority vote of a committee duly designated by the board of directors in the case of a board-managed LLC, by the managers of a manager-managed LLC, or by the members of a member-managed LLC, as applicable (in which designation directors, managers or members, as applicable, who are parties may participate), consisting solely of two (2) or more directors, managers or members, as applicable, not at the time parties to the proceeding;

(C) By independent special legal counsel:

(i) Selected by the board of directors in the case of a director-managed LLC, by the managers of a manager-managed LLC, or by the members of a member-managed LLC, as applicable, or by a committee in the manner prescribed in subsection (f)(2)(A) or (B); or

(ii) If a quorum of the board of directors in the case of a director-managed LLC or a quorum of the managers of a manager-managed LLC or a quorum of the members of a member-managed LLC, as applicable, cannot be obtained under subsection (f)(2)(A) and a committee cannot be designated under subsection (f)(2)(B), selected by majority vote of the full board of

directors in the case of a director-managed LLC, by the managers of a manager-managed LLC, or by the members of a member-managed LLC (in which selection directors or members, as applicable, who are parties may participate); or

(D) By a majority vote of the members of a director-managed LLC or a manager-managed LLC, but ownership interests owned by or voted under the control of members who are at the time parties to the proceeding may not be voted on the determination.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (f)(2)(C) to select counsel.

(g)

(1) An officer of the LLC who is not a responsible person is entitled to mandatory indemnification under subsection (c), and is entitled to apply for court-ordered indemnification under subsection (e), in each case to the same extent as a responsible person.

(2) The LLC may indemnify and advance expenses to an officer, employee, independent contractor or agent of the LLC who is not a responsible person to the same extent as a responsible person.

(3) An LLC may also indemnify and advance expenses to an officer, employee, independent contractor or agent who is not a responsible person to the extent, consistent with public policy, that may be provided by its LLC

documents, general or specific action of its board of directors of a director-managed LLC, by the managers of a manager-managed LLC, or by members of a member-managed LLC, or by contract.

(h) An LLC may purchase and maintain insurance on behalf of a person who is or was a responsible person, officer, employee, independent contractor, or agent of the LLC, or who, while a responsible person, officer, employee, independent contractor, or agent of the LLC, is or was serving at the request of the LLC as a responsible person, officer, partner, trustee, employee, independent contractor, or agent of another domestic or foreign LLC, corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by such person in that capacity or arising from such person's status as a responsible person, officer, employee, independent contractor, or agent, whether or not the LLC would have power to indemnify such person against the same liability under subsection (b), (c) or (g).

(i)

(1) The indemnification and advancement of expenses granted pursuant to, or provided by, this section shall not be deemed exclusive of any other rights to which a responsible person seeking indemnification or advancement of expenses may be entitled, whether contained in this section, the LLC documents, or when authorized by such LLC documents, in a resolution of members, a resolution of directors, a resolution of managers, or an agreement providing for such indemnification; provided, that no indemnification may be made to or on behalf of any responsible person if a judgment or other final adjudication adverse to the responsible person or officer establishes such person's liability:

(A) For any breach of the duty of loyalty to the LLC or its members;



(B) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

(C) Under § 48-251-107.

(2) Nothing contained in this section shall affect any rights to indemnification to which the LLC's personnel, other than responsible persons, may be entitled by contract or otherwise under law. If the LLC documents limit indemnification or advances for expenses, indemnification and advances for expenses are valid only to the extent consistent with the LLC documents.

(3) This section does not limit an LLC's power to pay or reimburse expenses incurred by a responsible person, officer, employee, independent contractor, or agent in connection with such person's appearance as a witness in a proceeding at a time when such person has not been made a named defendant or respondent to the proceeding.

#### **SECTION 48-249-116.**

An LLC is a legal entity distinct from its members.

#### **SECTION 48-250-101.**

(a) One (1) or more persons acting as organizers may form an LLC by filing with the secretary of state articles for the LLC which contain the information required by § 48-250-102. Unless a delayed effective date is specified in the articles, the LLC is formed and its existence begins when the articles are filed with the secretary of state. Subject to subsection (c), if a delayed effective date is specified in the manner permitted by § 48-250-102(a)(7), the LLC is formed and its existence begins at a future specified date or on the occurrence of a future specified event, neither one of which may be or occur more than ninety (90) days from the initial filing of the articles.

(b) If the date of formation is the date of filing of the articles, the secretary of state's acceptance for filing of the articles is conclusive proof that the organizers satisfied all conditions precedent to formation except in a proceeding by the state to cancel or revoke the formation or existence of the LLC or to dissolve the LLC involuntarily.

(c) If the date of formation of the LLC is later than the date of filing of the initial articles with the secretary of state, the organizers or any member may, within thirty (30) days after the date of actual formation, file a certificate of formation which states that the LLC was formed and the date of formation. If the date of formation of the LLC is later than the date of filing of the initial articles with the secretary of state, the secretary of state's acceptance for filing of the certificate of formation is conclusive proof that the organizers satisfied all conditions precedent to formation except in a proceeding by the state to cancel or revoke the formation or existence of the LLC or to dissolve the LLC involuntarily. If a certificate of formation is not filed within one hundred twenty (120) days from the date of initial filing of the articles, the presumed effective date of the formation shall be on the ninetieth (90<sup>th</sup>) day following the date of filing of the articles. The presumption, however, can be rebutted.

#### **SECTION 48-250-102.**

(a) The articles must set forth:

- (1) A name for the LLC that satisfies the requirements of § 48-249-106;
- (2) The street address and zip code of the initial registered office of the LLC, the county in which the office is located and the name of its initial registered agent at that office;
- (3) The street address and zip code of the principal executive office of the LLC and the county in which the office is located;

(4) If the LLC will be manager-managed or director-managed, a statement to that effect (and in the absence of such a statement, the LLC shall be member-managed);

(5) If the LLC will have more than six (6) members at the date of filing of the articles, a statement of the number of members at the date of the filing of the articles;

(6) If, pursuant to § 48-249-114(f), one (1) or more members are personally liable for all of the debts, obligations and liabilities of the LLC, the articles must set forth the information required in § 48-249-114(f);

(7) If the existence of the LLC is to begin upon a future date or the happening of a specific event, the articles must state the future date or describe the happening of the specific event. In no event may the future date or the actual occurrence of the specific event be more than ninety (90) days from the proper filing of the articles in compliance with § 48-250-101; and

(7) If the LLC, while being formed under Tennessee law, is not to engage in business in Tennessee, a statement that the LLC is prohibited from engaging in business in Tennessee.

(b) The articles may set forth:

(1) Provisions permitted to be set forth in an operating agreement;

(2) Other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the LLC; and

(3) If the LLC is director-managed, a provision eliminating or limiting the personal liability of a director to the LLC or its members for monetary damages for breach of fiduciary duty as a director; provided, that such provision shall not eliminate or limit the liability of a director:

(A) For any breach of the director's duty of loyalty to the LLC or its members;

(B) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

(C) Under § 48-251-307.

No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provisions become effective. All references in this subsection to a "director" are also deemed to refer to a member who, pursuant to the operating agreement, has been delegated some or all of the rights of a director in the management and conduct of the LLC's business, as set forth in § 48-252-103(i)(2)].

(c) It is not necessary to set forth in the articles any of the LLC powers granted by this Act.

(d) The articles may not contain any provisions prohibited by § 48-250-105(b).

As to all other matters, if the articles are inconsistent with any provision of an operating agreement, the articles shall control.

#### **SECTION 48-250-103.**

(a) Except as otherwise provided in § 48-250-105, all members of an LLC may enter into an operating agreement to regulate the affairs of the LLC and the conduct of its business, and to govern relations among the members, holders of financial rights, managers, directors, officers and LLC, as applicable. Persons other than members, including holders of financial rights, may, but need not, also enter into the operating agreement. An operating agreement may be entered into either before, after or at the time of filing of articles of organization and, whether entered into before, after or at the time of such filing, may be made effective as of the formation of the LLC or at such later time or date as provided in the operating agreement. Unless the articles of organization

or a written operating agreement specifically requires otherwise, an operating agreement need not be in writing.

(b) A court of equity may enforce an operating agreement by injunction or by such other equitable relief as the court in its discretion determines to be fair and appropriate in the circumstances. As an alternative to injunctive or other equitable relief, when the provisions of § 48-254-101 are applicable, a court of equity may conduct or continue the dissolution and winding up of the LLC.

(c) An LLC with a single member may adopt an operating agreement between the member and the LLC.

#### **SECTION 48-250-104.**

(a) Articles of organization of an LLC may be amended at any time by delivering articles of amendment to the secretary of state for filing. The articles of amendment must set forth the:

- (1) Name of the LLC;
- (2) Date of each amendment's adoption; and
- (3) Text of each amendment to the articles.

(b) An LLC may restate its articles of organization at any time. Restated articles of organization must be signed and filed in the same manner as articles of amendment. Restated articles of organization must be designated as such in the heading and state in the heading or in an introductory paragraph the LLC's present name and, if it has been changed, all of its former names and the date of the filing of its initial articles of organization.

(c) Any amendment to an LLC's articles must be approved by a majority vote of the members. Any amendment to an LLC's operating agreement must be approved by the method provided in its LLC documents. If the LLC documents do not provide for the

method by which an operating agreement may be amended, then all of the members must agree to any amendment of an operating agreement.

**SECTION 48-250-105.**

(a) To the extent the LLC documents do not otherwise provide, this Act governs relations among the members, holders of financial rights, managers, directors, officers and LLC, as applicable. It is the express intent of this Act that members of an LLC may modify, alter or waive any provisions of this Act in the LLC documents except as otherwise set forth in § 48-250-105(b).

(b) The LLC documents may not:

(1) Vary the requirement under § 48-249-102(5) that a director be an individual;

(2) Vary the notice requirements under § 48-249-103 or the other provisions of this Act in a manner that is manifestly unreasonable;

(3) Vary the requirements with respect to its name under § 48-249-106;

(4) Vary the requirements under § 48-249-112(c) regarding the Workers' Compensation Law;

(5) Eliminate or vary the potential for personal liability under § 48-249-114(a)(3) or (d);

(6) Eliminate or vary the restrictions on indemnification in §§ 48-249-115(i)(1)(A), (B) or (C);

(7) Eliminate or vary the restrictions in §§ 48-250-102 (b)(3)(A), (B), or (C) on the elimination or limitation of the personal liability of a director in the articles under § 48-250-102(b)(3);

(8) Eliminate or vary the restrictions on distributions in § 48-251-106;

(9) Eliminate or vary the liability for unlawful distributions in § 48-251-107;

(10) Authorize a director to appoint a proxy under § 48-252-101(g);

(11) Unreasonably restrict a right to information or access to records under § 48-251-108;

(12) Eliminate the duty of loyalty under §§ 48-252-103(b)(1) or (2), but the LLC documents may:

(A) Identify specific types or categories of activities that do not violate the duty of loyalty under §§ 48-252-103(b)(1) or (2), if not manifestly unreasonable; and

(B) Specify the number or percentage of members, disinterested managers or disinterested directors (which may be greater or lesser than the number or percentage required under § 48-252-104, if applicable), that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(13) Unreasonably reduce the duty of care under § 48-252-103(c) or § 103(i)(4)(ii) and (iii), 103(j)(ii) and (iii);

(14) Eliminate the obligation of good faith and fair dealing under § 48-252-103(d), but the LLC documents may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(15) Eliminate the obligation of good faith under §§ 48-252-103(i)(4)(i) or 103(j)(i), but the LLC documents may determine standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(16) Vary the right to expel a member in an event specified in § 48-253-103(a)(6);

(17) Vary the requirement to wind up the LLC's business in a case specified in § 48-254-101(a)(5);

(18) Vary any requirements relating to documents required to be filed with the office of the secretary of state or any register of deeds or otherwise vary or restrict any other rights of the secretary of state or any register of deeds; or

(19) Otherwise vary or restrict any rights of any other person under this Act, other than rights of a manager, director, officer, employee, agent, member, and a holder of financial rights.

#### **SECTION 48-251-101.**

(a) A contribution to an LLC may consist of tangible or intangible property or other benefit to the LLC, including money, a promissory note, services performed, or an obligation or agreement to contribute money, property, or to perform services.

(b) A contribution agreement, whether made before or after the formation of the LLC, is not enforceable against the prospective contributor unless it is in writing and signed by the prospective contributor.

(c) Neither a purported contribution nor an offer of consideration to make a contribution shall be treated as a contribution to an LLC until (i) the contribution is accepted by the members and by the managers of a manager-managed LLC or by the directors of a director-managed LLC, as applicable, and (ii) the amount and value of the contribution are recorded in the LLC documents.

(d) The amount, the terms and conditions of payment or performance, the value and the adequacy of the consideration to an LLC for each contribution shall be determined by the members and by the managers of a manager-managed LLC or by the



directors of a director-managed LLC, as applicable. The determination of the amount, value and adequacy of the consideration to an LLC for a contribution are valid and binding if made in good faith and on the basis of accounting methods, or a fair valuation or other method (including agreement as to value by the contributor and the LLC), reasonable in the circumstances. Inclusion of the amount of a contribution and the value of the consideration for a contribution in the LLC documents is evidence of the acceptance of the amount and the value of a contribution.

(e) The vote or consent of the members required to accept a contribution shall be the same as required to admit a member under § 48-253-101.

#### **SECTION 48-251-102.**

(a) A member or other person who has agreed in writing to make a contribution to an LLC is obligated to make such contribution of tangible or intangible property or other benefit to, or to perform services for an LLC, even if the member or other person is unable to perform personally because of death, disability or any other reason.

(b) If a member or other person does not make a required contribution of property or services, then, at the option of the LLC to which the member or other person is obligated, the member or the other person shall be obligated to contribute money equal to the value (as stated in the LLC documents or the records of the LLC) of that portion of the required contribution that has not been made. The foregoing option of the LLC is in addition to, and not in lieu of any other rights and remedies, including the right to specific performance, that the LLC or its members may have against such member or other person, whether under this Act, the LLC documents or otherwise.

(c) A creditor of an LLC who extends credit or otherwise acts in reliance on an obligation described in subsection (a), and without notice of any compromise under § 48-252-101(f)(2), may enforce the original obligation.

(d) The LLC documents may provide that the interest of any member or other person who fails to make any contribution that the member or other person is obligated to make to an LLC shall be subject to specified penalties for, or specified consequences of, such failure. Such a penalty or consequence may take the form of:

- (1) Reducing or eliminating the defaulting member's or person's proportional interest in the LLC;
- (2) Subordinating the interest of the defaulting member or other person to that of non-defaulting members or other persons;
- (3) Forcing a sale of the interest of the defaulting member or other person;
- (4) Causing forfeiture of the interest of the defaulting member or other person;
- (5) Permitting other members or persons to lend to the LLC the amount necessary to satisfy the obligation of the defaulting member or other person and the charging of interest thereon up to the highest rate allowed by law with repayments of such loans being made from the distributions allocable to the interest of the defaulting member or other person;
- (6) Fixing of the value of the interest of the defaulting member or other person by appraisal or by formula and redemption or sale of the interest of the defaulting member or other person at such value; or
- (7) Any other penalty or consequence.

**SECTION 48-251-103.**

(a) The LLC documents may provide for classes or groups of directors, managers, members or holders of financial rights having such relative rights, preferences, limitations, powers and duties as the LLC documents may provide, and

may make provision for the future creation, in the manner provided in the LLC documents, of additional classes or groups of directors, managers, members or holders of financial rights having such relative rights, powers and duties as may from time to time be established, including financial rights, preferences, limitations, powers and duties senior or subordinate to existing classes and groups of directors, managers, members or holders of financial rights. The LLC documents may provide for the taking of an action, including the amendment of the LLC documents, without the vote or approval of any director, manager, member or holder of financial rights or of any class or group of directors, managers, members or holder of financial rights, including an action to create a class or group of directors, managers, members or holder of financial rights under the provisions of the LLC documents. The LLC documents may denominate membership interests or financial rights as units, shares, percentages, participations, distribution interests, ownership or economic interests, with or without governance rights, and with or without fixed or variable rights to participate in distributions, assets and properties, allocations of profits and losses, and fixed or variable obligations to the LLC, or any combination thereof.

(b) The LLC documents may grant to all or certain identified directors, managers, members or holders of financial rights, or to a specified class or group of the directors, managers, members or holders of financial rights, the right to vote separately or to vote with all or any class or group of directors, managers, members or holders of financial rights, on any matter. The voting rights of directors, managers, members and of holders of financial rights may be per capita, or by number, unit, share, percentage, participation, economic interest, or financial rights, or by one (1) or more classes, groups or any other basis. The LLC documents may provide that any director, manager, member or holder of financial rights, or any class or group of directors, managers,

members or holders of financial rights, shall have full, partial, limited or no voting rights with respect to any or all matters.

(c) Except as otherwise provided by the LLC documents, a holder of financial rights that is not also a member does not have a right to vote by reason of or with respect to such financial rights.

(d) Except as otherwise provided by the LLC documents, all membership interests and financial rights shall be of the same class and group, with the same relative rights, powers and duties, and without preferences, subordinations or limitations.

**SECTION 48-251-104.**

(a) Any profits and losses of an LLC shall be allocated among the members or holders of financial rights in the manner provided in the LLC documents.

(b) If the LLC documents do not provide for allocations of profits and losses, profits and losses shall be allocated among the members and holders of financial rights in equal shares.

(c) The LLC documents may provide for a record date with respect to allocations of profits and losses.

**SECTION 48-251-105.**

(a) Any distributions of an LLC shall be allocated and distributed among the members and holders of financial rights in the manner provided in the LLC documents.

(b) If the LLC documents do not provide for the allocations of distributions, then distributions, including distributions on termination of the LLC except as provided in § 48-254-120, shall be allocated among the members and holders of financial rights in equal shares.

(c) The LLC documents may provide for a record date with respect to distributions.

(d) Neither a member nor a holder of financial rights has a right to demand or receive, and may not be required to accept, a distribution in kind regardless of the contribution of the member or holder of financial rights.

(e) If a member or holder of financial rights becomes entitled to receive a distribution, the member or holder of financial rights has the status of, and is entitled to all remedies available to, a general, unsecured creditor of the LLC with respect to the distribution.

(f) A member or holder of financial rights is entitled to receive distributions before dissolution only as provided by the LLC documents or by a majority vote of the members of a member-managed LLC, the managers of a manager-managed LLC or the directors of a director-managed LLC, as applicable.

#### **SECTION 48-251-106.**

(a) No distribution may be made by an LLC if, after giving effect to the distribution:

(1) The LLC would not be able to pay its debts as they become due in the ordinary course of business; or

(2) The LLC's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the LLC were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members and holders of financial rights, whose preferential rights are superior to those receiving the distribution; provided, however, that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the total assets of the LLC only to the extent that the fair value of the property exceeds such liability.

(b) An LLC may base a determination that a distribution is not prohibited under subsection (a) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(c) Except as otherwise provided in subsection (f), the effect of a distribution under subsection (a) is measured:

(1) In the case of distribution by purchase, redemption, or other acquisition of an interest in an LLC, as of the date money or other property is transferred or debt incurred by the LLC; and

(2) In all other cases, as of the date the:

(A) Distribution is authorized if the payment occurs within four (4) months after the date of authorization; or

(B) Payment is made if it occurs more than four (4) months after the date of authorization.

(d) Indebtedness of an LLC to a member or holder of financial rights or incurred by reason of a distribution made in accordance with this section is at parity with the LLC's indebtedness to its general, unsecured creditors, except to the extent such indebtedness is subordinated by agreement or, in the event of dissolution and liquidation, to the extent otherwise provided by § 48-254-120.

(e) Indebtedness of an LLC, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of determinations under subsection (a) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to members and holders of financial rights could then be made under this section.

(f) If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

**SECTION 48-251-107.**

(a) A member, manager or director of an LLC who votes for or consents to a distribution made in violation of § 48-251-106 or the LLC documents is personally liable to the LLC for the amount of the distribution which exceeds the amount that could have been distributed without violating § 48-251-106 or the LLC documents if such member, manager or director did not comply with the applicable standards of conduct for such member, manager or director as set forth in § 48-252-103.

(b) A member or holder of financial rights who received a distribution and knew the distribution was made in violation of § 48-251-106 or the LLC documents is personally liable to the LLC, but only to the extent that the distribution received by the member or holder of financial rights exceeded the amount that could have been properly paid under § 48-251-106.

(c) A member, holder of financial rights, manager or director against whom an action is brought under this section may implead in the action all:

(1) Other members, holders of financial rights, managers and directors who voted for or consented to the distribution in violation of subsection (a) and may compel contribution from them; and

(2) Members and holders of financial rights who received a distribution in violation of subsection (b) and may compel contribution from the members or holders of financial rights in the amount received in violation of subsection (b).

(d) A proceeding under this section is barred unless it is commenced within three (3) years after the distribution.

**SECTION 48-251-108.**

(a) An LLC shall provide members and their agents and attorneys access to its records, if any, at the LLC's principal executive office or other reasonable locations specified in the LLC documents. An LLC shall provide former members and their agents and attorneys access for proper purposes to records pertaining to the periods during which they were members. The right of access provides the opportunity to inspect and copy records during ordinary business hours if the member or its agent or attorney gives the LLC written notice of such demand at least five (5) business days before the date on which the member or its agent or attorney wishes to inspect and copy. An LLC may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(b) An LLC shall furnish to a member, and to the legal representative of a deceased member or member under legal disability:

(1) Without demand, information concerning the LLC's business or affairs reasonably required for the proper exercise of the member's rights and performance of the member's duties under the LLC documents or this Act; and

(2) On written demand, other information concerning the LLC's business or affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(c) A member has the right upon written demand given to an LLC to obtain at the LLC's expense a copy of any LLC documents.

(d) Holders of financial rights and their agents and attorneys shall have a limited right of access in order to obtain information needed to comply with the requirements of either federal or state tax laws concerning their financial rights. The right of access provides the opportunity to inspect and copy records for such purpose during ordinary



business hours if the holder of financial rights or its agent or attorney gives the LLC written notice of such demand at least five (5) business days before the date on which the holder of financial rights or its agent or attorney wishes to inspect and copy. An LLC may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(e) If an LLC does not allow a member that complies with § 48-251-108(a) or a holder of financial rights that complies with § 48-251-108(d), as applicable, to inspect and copy any records required by the applicable subsection to be available for inspection, a court in the county in which the principal executive office of the LLC (or, if none in this state, its registered office) is located may summarily order inspection and copying of the records demanded, at the expense of the LLC on application of such member or holder of financial rights, as applicable. If the court orders inspection and copying of the records demanded, it shall also order the LLC to pay the costs (including reasonable counsel fees) of the member or holder of financial rights, as applicable, incurred to obtain the order if the member or holder of financial rights proves that the LLC refused inspection without a reasonable basis for doubt regarding the right of the member or holder of financial rights to inspect the records demanded. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of such records by the demanding member or holder of financial rights, as applicable.

#### **SECTION 48-251-109.**

(a) The LLC documents may establish or provide for the establishment of one or more designated series of members, holders, managers, directors, membership interests or financial rights having separate rights, powers or duties with respect to specified property or obligations of the LLC or profits and losses associated with

specified property or obligations, and any such series may have a separate business purpose or investment objective.

(b) Notwithstanding anything to the contrary set forth in the Act or under other applicable law, in the event that the LLC documents establish or provide for the establishment of one or more series, and if separate and distinct records are maintained for any such series and the assets associated with any such series are reflected and held in such separate and distinct records (directly or indirectly, including through a nominee or otherwise) and accounted for in such separate and distinct records separately from the other assets of the LLC, or any other series thereof, and if the LLC documents so provide, and if notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the articles of the LLC, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the LLC generally or any other series thereof, and, unless otherwise provided in the LLC documents, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the LLC generally or any other series thereof shall be enforceable against the assets of such series. Notice in the articles of the limitation on liabilities of a series as referenced in this subsection shall be sufficient for all purposes of this Act whether or not the LLC has established any series when such notice is included in the articles, and there shall be no requirement that any specific series of the LLC be referenced in such notice. The fact that articles that contain the foregoing notice of the limitation on liabilities of a series is on file in the office of the secretary of state shall constitute notice of such limitation on liabilities of a series.

(c) Notwithstanding the provisions of § 48-249-114(a) of this Act, a member may agree to be liable for all of the debts, liabilities and obligations of one or more series of an LLC but not for any other series by provision in the articles in the manner set forth in § 48-249-114(f).

(d) The LLC documents may include the provisions authorized under §§ 48-251-103(a) or (b), or both, as to the directors, members, managers or holders of financial rights associated with a particular series as if the series were a separate LLC.

(e) The provisions of §§ 48-251-104, 105 and 106 shall apply to a series as if the series were a separate LLC.

(f) The provisions of chapters 252 and 253 of this Act shall apply to a series as if the series were a separate LLC.

(g) A series may be terminated and its affairs wound up without causing the dissolution of the LLC or of any other series of the LLC. All provision of this Act regarding dissolution or winding up, including but not limited to the rights of members, directors or managers to cause a dissolution of an LLC, shall apply to a series as if the series were a separate LLC.

(h) A series shall be terminated and its affairs shall be wound up upon the occurrence of the same events or reasons as is provided in this Act for an LLC.

(i) If a foreign LLC that is registering to do business in the state of Tennessee in accordance with chapter 257 of this Act is governed by LLC documents that establish or provide for the establishment of designated series of members, directors, managers or interests having separate rights, powers or duties with respect to specified property or obligations of the foreign LLC or profits and losses associated with specified property or obligations, that fact shall be so stated on the application for registration as the foreign LLC. In addition, the foreign LLC shall state on such application whether the debts,

liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series, if any, shall be enforceable against the assets of such series only, and not against the assets of the foreign LLC generally or any other series thereof, and, unless otherwise provided in the LLC documents, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign LLC generally or any other series thereof shall be enforceable against the assets of such series.

**SECTION 48-252-101.**

(a) In a member-managed LLC:

(1) Each member has equal rights in the management and conduct of the LLC's business; and

(2) Except as otherwise provided in subsections (e) or (f), any matter relating to the business of the LLC shall be decided by a majority vote of the members.

(b) In a manager-managed LLC:

(1) Each manager has equal rights in the management and conduct of the LLC's business;

(2) Except as otherwise provided in subsections (e) or (f), any matter relating to the business of the LLC shall be exclusively decided by the manager or, if there is more than one (1) manager, by a majority vote of the managers; and

(3) A manager:

(A) Must be designated, appointed, elected, removed, or replaced by a majority vote of the members; and

(B) Holds office until a successor has been designated, appointed or elected and qualified, unless the manager sooner resigns or is removed.

(c) In a director-managed LLC:

(1) All LLC powers shall be exercised under the authority of, and the business and affairs of the LLC shall be managed under the direction of, its board of directors;

(2) Except as otherwise provided in subsections (e) or (f), any matter relating to the business of the LLC shall be exclusively decided by the director or, if there is more than one (1) director, by a majority vote of the directors; and

(3) A director:

(A) Must be designated, appointed, elected, removed, or replaced by a majority vote of the members; and

(B) Holds office until a successor has been designated, appointed or elected and qualified, unless the director sooner resigns or is removed.

(d) A director-managed LLC must have a president appointed or elected by a majority vote of the directors authorized to act as an agent of the LLC under § 48-252-102(d).

(e) The LLC documents or the members, managers, or directors of an LLC may delegate rights and powers to manage and control the business and affairs of the LLC to one (1) or more officers, agents or employees provided that such delegation is reasonable under the circumstances and made in good faith.

(f) The only matters of an LLC's business requiring the consent of all of the members are:

(1) The amendment of an LLC's operating agreement if the LLC documents do not provide for the method by which the operating agreement may be amended, as provided in § 48-250-104(c);

(2) The compromise of an obligation to make a contribution under § 48-251-102(c);

(3) The compromise, as among members, of an obligation of a member to make a contribution or return money or other property paid or distributed in violation of this Act;

(4) The admission of a new member (including without limitation by transfer of any of a member's governance rights to any person not a member as provided in § 48-253-107(b)(2);

(5) The use of the LLC's property to redeem an interest subject to a charging order; and

(6) An election by an LLC formed prior to January 1, 2006 to be governed by this Act, as provided in § 48-258-102(b).

(g) Proxies. A member or manager may appoint a proxy to vote or otherwise act for the member or manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact.

#### **SECTION 48-252-102.**

(a) Subject to subsections (d) and (e), in a member-managed LLC:

(1) Each member is an agent of the LLC for the purpose of its business, and an act of a member, including the signing of an instrument in the LLC's name, for apparently carrying on in the ordinary course the LLC's business or business of the kind carried on by the LLC binds the LLC, unless the member had no authority to act for the LLC in the particular matter and the person with

whom the member was dealing knew or had notice that the member lacked authority.

(2) An act of a member which is not apparently for carrying on in the ordinary course the LLC's business or business of the kind carried on by the LLC binds the LLC only if the act was authorized by the other members.

(b) Manager-Managed LLC. Subject to subsections (d) and (e), in a manager-managed LLC:

(1) A member is not an agent of the LLC for the purpose of its business solely by reason of being a member. Each manager is an agent of the LLC for the purpose of its business, and an act of a manager, including the signing of an instrument in the LLC's name, for apparently carrying on in the ordinary course the LLC's business or business of the kind carried on by the LLC binds the LLC, unless the manager had no authority to act for the LLC in the particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority.

(2) An act of a manager which is not apparently for carrying on in the ordinary course the LLC's business or business of the kind carried on by the LLC binds the LLC only if the act was authorized under § 48-252-101.

(c) Director-Managed LLC. Subject to subsections (d) and (e), in a director-managed LLC no member or director is an agent of the LLC for the purpose of its business solely by reason of being a member or a director. The president and any other authorized officers of a director-managed LLC shall be agents of the LLC as described in subsection (d).

(d) In a director-managed LLC, or any other LLC with a president or other authorized officers, the president and each other authorized officer of the LLC is an

agent of the LLC for the purpose of its business, and an act of an authorized officer, including the signing of an instrument in the LLC's name, for apparently carrying on in the ordinary course the LLC's business or business of the kind carried on by the LLC binds the LLC, unless the officer had no authority to act for the LLC in the particular matter and the person with whom the officer was dealing knew or had notice that the officer lacked authority. An act of an officer which is not apparently for carrying on in the ordinary course the LLC's business or business of the kind carried on by the LLC binds the LLC only if the act was authorized under § 48-252-101.

(e) The articles may contain a grant of authority to one (1) or more members, managers, directors or officers to execute instruments for the transfer of real property, and any restrictions and conditions with respect to such authority. In the event the articles name one (1) or more persons who are granted authority to execute instruments for the transfer of real property with any restrictions and conditions with respect to such authority so listed, such grant shall be conclusive in favor of a person who gives value unless the person knew or had notice that such grant of authority had been rescinded by the LLC. However, such designation, unless it expressly states that it is exclusive, shall not override § 48-252-102(a), (b), (c), or (d).

(f)

(1) A person knows a fact if the person has actual knowledge of it.

(2) A person has notice of a fact if the person:

(A) Knows the fact;

(B) Has received a notification of the fact; or

(C) Has reason to know the fact exists from all of the facts known

to the person at the time in question.



(3) A person notifies or gives a notification of a fact to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(4) A person receives a notification when the notification:

(A) Comes to the person's attention; or

(B) Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(5) An entity knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the entity knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention had the entity exercised reasonable diligence. An entity exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the entity and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the entity to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

#### **SECTION 48-252-103.**

(a) The only fiduciary duties a member owes to a member-managed LLC and its other members are the duty of loyalty and the duty of care imposed by subsections (b) and (c). A holder of financial rights owes no duties to the LLC or to the other members solely by reason of being a holder of financial rights.

(b) A member's duty of loyalty to a member-managed LLC and its other members and holders of financial rights is limited to the following:

(1) To account to the LLC and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the LLC's business or derived from a use by the member of the LLC's property, including the appropriation of any opportunity of the LLC;

(2) Subject to § 48-252-104, to refrain from dealing with the LLC in the conduct or winding up of the LLC's business as or on behalf of a party having an interest adverse to the LLC; and

(3) To refrain from competing with the LLC in the conduct of the LLC's business before the termination of the LLC.

(c) A member's duty of care to a member-managed LLC and its other members and holders of financial rights in the conduct of and winding up of the LLC's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A member shall discharge the member's duties to a member-managed LLC and its other members and holders of financial rights under this Act or under the LLC documents and exercise any rights with respect to the LLC consistently with the obligation of good faith and fair dealing.

(e) A member of a member-managed LLC does not violate a duty or obligation under this Act or under the LLC documents merely because the member's conduct furthers the member's own interest.

(f) A member of a member-managed LLC may lend money to and transact other business with the LLC. As to each loan or transaction, the rights and obligations of the

member are the same as those of a person who is not a member, subject to other applicable law.

(g) This section applies to a person winding up the LLC's business as the personal or legal representative of the last surviving member as if the person were a member.

(h) In a manager-managed LLC:

(1) A member owes no duties to the LLC or to the other members or holders of financial rights solely by reason of being a member;

(2) A manager is held to the same standards of conduct prescribed for members in subsections (b) through (f);

(3) A member that, pursuant to the LLC documents, exercises some or all of the rights of a manager in the management and conduct of the LLC's business is held to the standards of conduct in subsections (b) through (f) to the extent that the member exercises the managerial authority vested in a manager by this Act; and

(4) A manager is relieved of liability imposed by law for violation of the standards prescribed by subsections (b) through (f) to the extent of the managerial authority delegated to the members by the LLC documents.

(i) In a director-managed LLC:

(1) A member owes no duties to the LLC or to the other members or holders of financial rights solely by reason of being a member;

(2) A member that, pursuant to the LLC documents, exercises some or all of the rights of a director in the management and conduct of the LLC's business is held to the standards of conduct for a director in this subsection (i) to

the extent that the member exercises the managerial authority vested in a director by this Act;

(3) A director is relieved of liability imposed by law for violation of the standards prescribed by this subsection (i) to the extent of the managerial authority of the director delegated to the members by the LLC documents; and

(4) A director shall discharge all duties as a director (including duties as a member of a committee):

(A) In good faith;

(B) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(C) In a manner the director, as applicable, reasonably believes to be in the best interests of the LLC.

(j) An officer of an LLC shall discharge all duties as an officer:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner the officer reasonably believes to be in the best interests of the LLC.

(k) In discharging the duties described in this § 48-252-103, a member, manager, director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One (1) or more officers or employees of the LLC whom the member, manager, director or officer reasonably believes to be reliable and competent in the matters presented;

(2) Legal counsel, public accountants, or other persons as to matters the member, manager, director or officer reasonably believes are within the person's professional or expert competence; or

(3) In the case of a director only, a committee of the board of directors of which the director is not a member, if the director reasonably believes the committee merits confidence.

(l) A member, manager, director or officer is not acting in good faith if the member, manager, director or officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (k) unwarranted.

(m) A member, manager, director or officer is not liable for any action taken as a member, manager, director or officer, or any failure to take any action, if the member, manager, director or officer performed its duties in compliance with this section.

(n) Any officer, agent or employee who exercises some or all of the rights of a member, manager, or director pursuant to a delegation of rights and power under § 48-252-101(e) of this Act is held to the same standards of conduct set forth in this §48-252-103 for members, managers, or directors, as applicable, to the extent that such officer, agent or employee exercises the delegated rights and powers. A member, manager or director is relieved of liability imposed by law for the standards prescribed in this § 48-252-103 to the extent that such party's managerial authority is vested in an officer, agent or employee pursuant to a delegation of rights and power under § 48-252-101(e) of this Act.

#### **SECTION 48-252-104.**

(a) A conflict of interest transaction is a transaction with the LLC in which a member, manager, director or officer as applicable, of the LLC has a direct or indirect interest. A conflict of interest transaction is not voidable by the LLC (and does not

violate the duty of loyalty in § 48-252-103(b)(2) solely because of the member's, manager's, director's, or officer's interest in the transaction, as applicable, if any one (1) of the following is true:

(1) The material facts of the transaction and the member's, manager's, director's, or officer's interest, as applicable, were disclosed or known to the managers or board of directors, as applicable, and the managers or board of directors, as applicable, authorized, approved, or ratified the transaction;

(2) The material facts of the transaction and member's, manager's, director's, or officer's interest, as applicable, were disclosed or known either (i) to the members entitled to vote and they authorized, approved, or ratified the transaction, or (ii) to all the members and all the members authorized, approved or ratified the transaction;

(3) The transaction was fair to the LLC; or

(4) The transaction was of a nature in which the conflict of interest is waived by the LLC documents. Such waiver shall be upheld unless manifestly unreasonable under the circumstances.

(b) For purposes of this section, a member, manager, director, or officer of the LLC, as applicable, has an indirect interest in a transaction if, but not only if:

(1) Another entity in which the member, manager, director, or officer as applicable, has a material financial interest, or in which the member, manager, director, or officer, as applicable, is a general partner, is a party to the transaction; or

(2) Another entity for which the member, manager, director, or officer is a member, governor, director, manager, officer, or trustee is a party to the

transaction and the transaction is or should be considered by the members, managers or directors, as applicable, of the LLC.

(c) For purposes of subsection (a)(1), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative majority vote of the managers or of the directors on the board of directors, as applicable, who have no direct or indirect interest in the transaction, and a transaction may be authorized, approved, or ratified under this section by a single manager or director, as applicable. If a majority of the managers or the directors, as applicable, who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a manager or director, as applicable, with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (a)(1) if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

(d) For purposes of clause (i) of subsection (a)(2), a conflict of interest transaction is authorized, approved, or ratified if it receives a majority vote of the membership interests entitled to be counted under this subsection. Membership interests owned by or voted under the control of a member, director or manager who has a direct or indirect interest in the transaction, and membership interests owned by or voted under the control of an entity described in subsection (b)(1), may not be counted in a vote of members to determine whether to authorize, approve or ratify a conflict of interest transaction under clause (i) of subsection (a)(2). The vote of those membership interests, however, shall be counted in determining whether the transaction is approved under other provisions of this Act.

(e) For purposes of clause (ii) of subsection (a)(2), a conflict of interest transaction may be authorized, approved, or ratified by the sole member of a single-member LLC.

**SECTION 48-252-105.**

(a) Each member, manager or director of an LLC, as applicable, shall have equal voting power per capita with each other member, manager or director.

(b) The LLC documents may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, managers or directors, as applicable, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy (in the case of members or managers), or any other matter with respect to the exercise of any such right to vote.

(c) On any matter that is to be voted on, consented to or approved by members, managers or directors, as applicable, the members, managers or directors, as applicable, may take such action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed (i) in the case of the members or managers, by the members or managers, as applicable, having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members or managers, as applicable, entitled to vote thereon were present and voted, or (ii) in the case of the directors, by all directors entitled to vote thereon. A consent transmitted by electronic transmission by a member, manager or director, or by a person or persons authorized to act for the member or manager, as applicable, shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term “electronic transmission” means any form of communication not directly involving the physical



transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process. Prompt notice of the taking of LLC action without a meeting by less than unanimous written consent of the members or managers, as applicable, shall be given to any member or manager, as applicable, entitled to vote thereon that did not sign such written consent; provided, however, that the failure to give such notice shall not affect the validity of the action taken.

**SECTION 48-253-101.**

(a) In connection with the formation of an LLC, a person is admitted as a member of the LLC upon the later to occur of:

(1) The formation of the LLC pursuant to § 48-250-101; or

(2) The time provided in and upon compliance with the LLC documents or, if the LLC documents do not so provide, when the person's admission is reflected in the records of the LLC.

(b) After an LLC is formed, all members must approve the admission of a new person as a member, the interest of such member and the contribution of such member. All consents under this subsection may be unreasonably withheld and are in the sole discretion of the member(s).

(c) An LLC may have only one member.

**SECTION 48-253-502.**

(a) A membership interest in an LLC is personal property. A member has no interest in specific LLC property. All property transferred to or acquired by an LLC is property of the LLC.

(b) At the request of any holder of a membership interest or financial rights in the LLC, or any portion thereof, the LLC shall state in writing the particular membership

interest or financial rights, or portion thereof, owned by such person as of the time the LLC makes the statement. The statement must describe such person's rights to vote, to share in profits and losses, and to share in distributions, as well as any assignment of the person's rights then in effect. The statement shall not be deemed to be a "security," as defined in § 47-8-102(15), except as provided in § 47-8-103(c), shall not be a "negotiable instrument," shall not be deemed to be a "bond" or "stocks," as those terms are used in § 67-2-101, and shall not be a vehicle by which a transfer of any membership interest or financial rights may be effected.

**SECTION 48-253-103.**

(a) A member's membership interest in an LLC is terminated upon the occurrence of any of the following events:

(1) The receipt by the LLC of written notice from the member of the member's express will to withdraw upon the date of the notice or on a later date specified by the member in the notice;

(2) An event specified in the LLC documents as causing the member's membership interest to terminate;

(3) The transfer of all of the member's financial rights, unless the transfer is for security purposes and has not been foreclosed or is pursuant to a court order charging the member's financial rights;

(4) The member's expulsion pursuant to the LLC documents;

(5) The member's expulsion by unanimous vote of the other members entitled to vote if:

(A) It is unlawful to carry on the business of the LLC with the member;

(B) (A) The member is a corporation or an LLC, (B) within ninety (90) days after the LLC notifies the member that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter or articles of organization (or the equivalent) have been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation or organization and (C) the member fails to obtain a revocation of the certificate of dissolution or a reinstatement of its charter or articles of organization (or the equivalent) or its right to conduct business within such ninety (90) day period; or

(C) The member is a general or limited partnership and has been dissolved and its business is being wound up;

(6) On application by the LLC or another member, the member's expulsion by judicial determination because the member:

(A) Engaged in wrongful conduct that adversely and materially affected the LLC's business;

(B) Willfully or persistently committed a material breach of the LLC documents or of a duty owed to the LLC or the other members under § 48-252-103; or

(C) Engaged in conduct relating to the LLC's business that makes it not reasonably practicable to carry on the business with the member;

(7) The member's:

(A) Filing a petition as a debtor in bankruptcy;

(B) Executing an assignment for the benefit of creditors;

(C) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property; or

(D) Failing, within ninety (90) days after the filing or appointment, to have dismissed the filing against the member of an involuntary petition in bankruptcy or to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence, or failing within ninety (90) days after the expiration of a stay to have the appointment vacated;

(8) In the case of a member who is an individual:

(A) The member's death;

(B) The appointment of a guardian or general conservator for the member; or

(C) A judicial determination that the member has otherwise become incapable of performing the member's duties under the LLC documents;

(9) In the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of all of the trust's financial rights, but not merely by reason of the substitution of a successor trustee; provided, however, that a distribution to a beneficiary of a trust established under § 2503(c) of the Code or a trust which is treated under § 676 of the Code as owned by the settlor of the trust shall not be considered to be a distribution of financial rights under this subsection;

(10) In the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of all of the estate's financial rights, but not merely the substitution of a successor personal representative or beneficiary; or the termination of the custodianship of a gift made under §§ 35-7-201, et seq., or the equivalent law of any foreign jurisdiction, and the transfer of the interest to the donee; or

(10) Termination of the existence of a member if the member is not an individual, estate, or trust other than a business trust.

(b)

(1) Except as otherwise provided in subsection (b)(2) or § 48-253-104, a member has the power and right to terminate such member's membership interest at any time, including, without limitation, upon withdrawal by express will pursuant to subsection (a)(1).

(2) A member of a family LLC does not have the power to terminate the membership interest of such member in such family LLC, and no event specified in subsections (a)(1), (a)(3), (a)(7), (a)(8), (a)(9), (a)(10) or (a)(11) shall result in the termination of the member's interest. In the event that a member of a family LLC attempts to transfer the member's interest or financial rights, such transfer shall be null and void.

#### **SECTION 48-253-104.**

If a membership interest of a member is terminated by the member in contravention of the LLC documents, then:

(a) The member forfeits governance rights in the winding up and termination process or in the continued business; and

(b) The member is liable for damages incurred by all the other members and the LLC due to the wrongful termination. Such damages and all other amounts owing, whether or not currently due, from the terminated member to an LLC may be offset against any amount owing from the LLC to the wrongfully terminating member.

**SECTION 48-253-105.**

(a) If the membership of a member terminates for any reason other than as the result of an event specified in § 48-253(a)(8), then:

(1) If the existence and business of the LLC are continued, the member whose membership interest has terminated loses all governance rights and will be considered merely an assignee of the financial rights owned before the termination of membership; and

(2) If the existence and business of the LLC are not continued, the member whose membership interest has terminated retains all governance rights owned before the termination and may exercise those rights through the winding up and termination of the LLC (except as otherwise provided under § 48-253-104 in the case of termination in contravention of the LLC documents).

(b) If the membership interest of a member terminates as a result of an event specified in § 48-253-103(a)(8):

(1) If the existence and business of the LLC are continued, then, effective as of the date of the applicable termination event, the governance rights associated with the affected membership interest are suspended and may not be exercised thereafter unless and until restored pursuant to subsection (b)(2). So long as such suspension remains in effect such member (or the representative of such member) will be considered merely an assignee of the financial rights owned before the termination pursuant to § 48-253-103(a)(8).

(2) If the existence and business of the LLC are continued, for a period of sixty (60) days following the event specified in § 48-253-103(a)(8) that triggers the suspension of governance rights under subsection (b)(1), the personal representative of the affected member shall have the option, exercisable by giving written notice to the LLC, to require the LLC to purchase the terminated member's interest in accordance with subsection (c) and § 48-253-106. If the personal representative fails to make such election within such period, then the LLC shall have the option for a period of sixty (60) days following expiration of the personal representative's option (or, if earlier, following the date of written notice from the personal representative that such option will not be exercised) to give written notice to the personal representative that the LLC will purchase the membership interest in accordance with subsection (c) and § 48-253-106. If neither the personal representative nor the LLC elect to exercise their respective options to cause the LLC to purchase such membership interest, the governance rights associated with such membership interest shall be restored effective as of the first day following expiration of the LLC's option period, and the personal representative shall be automatically admitted and substituted as a member of the LLC without further action. If either the personal representative or the LLC elects to cause the LLC to purchase such membership interest, the suspension of governance rights associated with such membership interest shall continue through the time of consummation of such purchase.

(3) If the existence and business of the LLC are not continued, the personal representative of the member whose membership has terminated retains all governance rights owned by the affected member before the termination of the membership and may exercise those rights through the

winding up and termination of the LLC (except as otherwise provided under § 48-253-104 in the case of termination in contravention of the LLC documents).

(c) If the existence and business of the LLC are continued, any member whose membership has terminated under this section (subject to the provisions of subsection (b)(2) in the case of terminations arising under § 48-253-103(a)(8), whether such termination was wrongful or otherwise, is entitled to receive from the LLC, subject to the provisions of § 48-253-104(b), the fair value of the terminated membership interest as of the date of termination of such membership interest calculated as set forth in § 48-253-106, in consideration for all the terminated member's membership interest in the LLC.

(d) Distribution if Business Not Continued. Subject to the provisions of § 48-253-104(b), if the business and existence of the LLC are not continued, any terminating member, whether such termination was wrongful or otherwise, is entitled to receive that member's distribution under §48-254-120.

#### **SECTION 48-253-106.**

In the event an LLC is required or elects to purchase a membership interest at fair value pursuant to § 48-253-105:

(a) The LLC must communicate its determination of fair value, and its proposed terms of payment, to the member who is entitled to receive payment in respect of such member's terminated interest not later than thirty (30) days after the date of termination or, if applicable, thirty (30) days after the later date of an election made pursuant to § 48-253-105(b)(2). Such communication must be accompanied by:

(1) A statement of the LLC's assets and liabilities as of the date of termination;

(2) The LLC's latest available balance sheet and income statement, if any; and



(3) An explanation of how the determination of fair value was made.

(b) If the amount of fair value and other terms of payment are fixed or are to be determined by the LLC documents, the amount and terms so fixed or determined govern.

(c)

(1) If an agreement as to the amount of fair value and payment terms is not made within one hundred twenty (120) days after the termination date or, if applicable, the later date of an election made pursuant to § 48-253-(b)(2), either the terminated member or the LLC may, within another one hundred twenty (120) days, commence a proceeding against the other to determine the fair value and payment terms. The LLC at its expense shall notify in writing all of the remaining members, and any other person the court directs, of the commencement of the proceeding. The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive. The court shall determine the fair value of the membership interest in accordance with the standards set forth in subsection (c)(2) together with the terms for payment.

(2) In an action brought to determine the fair value of a membership interest in an LLC, the court:

(A) Shall enforce any governing terms in the LLC documents as to the amount of fair value and other terms of payment as provided in subsection (b);

(B) In the absence of any such governing terms as provided in subsection (b), shall determine the fair value of the membership interest, considering among other relevant evidence the going concern value of the LLC, any other agreement (non-governing as provided in subsection

(b)) among any members fixing the price or specifying a formula for determining value of membership interests for any other purpose, the recommendations of an appraiser, if any, appointed by the court, the recommendations of any of the appraisers of the parties to the legal proceeding, and any legal or financial constraints on the ability of the LLC to purchase the interest;

(C) Shall specify the terms of the purchase, including, if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the other creditors of the LLC, security (including the purchased membership interest) for a deferred purchase price, and a covenant not to compete or other restriction on the terminated member;

(D) Shall require, subject to retention of any security interest by the terminated member pursuant to subsection (c)(2)(iii), the terminated member to deliver an assignment of the membership interest to the purchaser upon receipt of the purchase price or the first installment of the purchase price;

(E) May award one (1) or more other parties their reasonable expenses (including attorney's fees and the expenses of appraisers or other experts) incurred in the proceeding if the court finds that a party to the proceeding violated such party's obligations to act good faith and to engage in fair dealing set forth in §48-252-103(d); and

(F) Shall order that interest at the rate specified for judgments under §47-14-121 must be paid on such amount from the date such amount was determined to be due through the date of payment if the

court determines that all or any installment of the amounts to be paid in respect of the terminating member's membership interest should have been paid prior to the date of judgment.

**SECTION 48-253-107.**

(a) Except as provided in subsection (c) or § 48-253-103(b)(2), the financial rights of a member or a holder of financial rights are transferable in whole or in part.

(b) An assignment of the financial rights of a member or a holder of financial rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled, together with the right to assign further the financial rights so assigned. An assignment of the financial rights of a member or a holder of financial rights does not dissolve the LLC and does not entitle or empower the assignee to become a member, cause a dissolution or exercise any governance rights, and any attempt by the assignee to do any of the foregoing shall be null and void.

(c)

(1) A restriction on the assignment of financial rights may be imposed in the LLC documents, by a written resolution adopted by all the members, or by a written agreement among, or other written action by, all the members and, if applicable, holders of financial rights.

(2) A restriction on the assignment of financial rights referenced in subsection (c)(1) is enforceable against the owner of the restricted financial rights. A written restriction on the assignment of financial rights that is set forth in the LLC documents may be enforced against a successor or transferee of the owner of the restricted financial rights, including a pledgee or a legal representative, whether or not such successor or transferee of the owner had

actual notice thereof. Except for a written restriction in the LLC documents, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.

(d) Any permissible assignment of financial rights under this section will be effective as to and binding on the LLC only when the assignee's name, address, social security or taxpayer identification number and the nature and extent of the assignment are reflected in the records of the LLC.

#### **SECTION 48-253-108.**

(a) A member may assign the member's full membership interest only by assigning all of the member's governance rights coupled with an assignment to the same assignee of all the member's financial rights. A member's governance rights are assignable only as provided in this section. A member has no power to assign all or any part of the member's membership interest except as provided in § 48-253-106 and this section.

(b)

(1) A member may, without the consent of any other member, assign governance rights to another member.

(2) With respect to a single-member LLC, the single member may freely assign governance rights and/or membership interests in the LLC to any other person at any time.

(3) Any other assignment of any governance rights is effective only if all of the members, other than the member seeking to make the assignment, approve the assignment by unanimous consent. The consent of a member may be evidenced in any manner specified in the LLC documents, but in the absence of such specification, consent shall be evidenced by a written instrument, dated

and signed by such person. The giving of consent is at the sole discretion of the consenting party and may be unreasonably withheld.

(4) If any purported or attempted assignment of governance rights is ineffective for failure to obtain the required consents, the purported or attempted assignment is ineffective in its entirety and any assignment of financial rights that accompanied the purported or attempted assignment of governance rights is void.

(c) When an assignment of governance rights is effective:

(1) The assignee becomes a member, if not already a member;

(2) If the assignor does not retain any governance rights, the assignor ceases to be a member; and

(3) An assignee that has become a member has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities, of a member under the LLC documents and this Act.

(4) Any obligations of the assignor existing at the time of transfer to make contributions to the LLC under §48-251-102 are not binding on an assignee without knowledge of such obligations at the time the assignee became a member;

(5) Any obligations of the assignor under § 48-251-107 to return wrongful distributions are not binding on an assignee without knowledge of such obligations at the time the assignee became a member; and

(6) The assignor is not released from liability to the LLC for obligations of the assignor existing at the time of transfer under §§ 48-251-102 and 48-251-107.

(d) The pledge of, or granting of a security interest, lien or other encumbrance in or against, all or any portion of the membership interest of a member is not an assignment and shall not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member. The foreclosure of such a pledge, security interest, lien or other encumbrance shall have the effect of the assignment of the financial rights derived from such membership interest and is subject to the provisions of 48-253-107(b).

(e) In addition to restrictions set forth in this chapter, restrictions on the assignment of governance rights may be imposed in accordance with the procedures and under the same conditions as stated in 48-253-107, for restricting the assignment of financial rights.

(f) Any permissible assignment of governance rights or membership interests under this section will be effective as to and binding on the LLC only when the assignee's name, address, social security or taxpayer identification number and the nature and extent of the assignment are reflected in the records of the LLC.

#### **SECTION 48-253-109.**

On application to a court of competent jurisdiction by any judgment creditor of a member or holder of financial rights, the court may charge such person's financial rights with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of such person's financial rights under § 48-253-107. This section does not deprive any member, holder or assignee of financial rights of the benefit of any exemption laws applicable to the membership interest or financial rights. This section is the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest or financial rights.

#### **SECTION 48-254-101.**

(a) An LLC is dissolved upon the first to occur of the following:

(1) If a period is fixed in the LLC documents for the duration of the LLC, upon the expiration of that period, but if no such time is set forth in the LLC documents, then the LLC shall have a perpetual existence;

(2) Upon the occurrence of an event specified in the LLC documents;

(3) By action of the members in accordance with § 48-254-103;

(4) By action of the organizers pursuant to § 48-254-102;

(5) By order of a court pursuant to § 48-254-116 or §48-254-117;

(6) By action of the secretary of state pursuant to § 48-254-105.

(7) At any time there are no members if (i) the personal representative or successor in interest to the last remaining member files a notice of dissolution as provided in § 48-254-109 within ninety (90) days after the occurrence of the event that terminated the continued membership of the last remaining member, or (ii) the LLC documents specify that the termination of the interest of the last remaining member dissolves the LLC; provided, that if such notice is not filed or the LLC documents do not provide for dissolution in that event, the LLC is not dissolved and is not required to be wound up and the personal representative or successor in interest to the last remaining member is automatically substituted for the last remaining member effective as of the occurrence of the event that terminated the continued membership of the last remaining member.

Notwithstanding the foregoing, the LLC documents may specify that any person or entity may be substituted as a member for the last remaining member effective as of the date of the event that causes the termination of membership of the last remaining member.

(b) The termination, dissociation, death, incapacity, withdrawal, retirement, resignation, expulsion, bankruptcy or dissolution of any member or the occurrence of any other event that terminates the continued membership of any member shall not cause the LLC to be dissolved or its affairs to be wound up, and upon the occurrence of any such event, the LLC shall be continued without dissolution.

(c) An LLC dissolved by any of the dissolution events specified in subsection (a) must be wound up and terminated as provided in this chapter.

#### **SECTION 48-254-102.**

(a) An LLC that has not accepted contributions may be dissolved and terminated by the organizers if a majority of the organizers shall sign and file with the secretary of state articles of termination containing:

- (1) The name of the LLC;
- (2) The date of organization;
- (3) A statement that contributions have not been accepted; and
- (4) A statement that no debts remain unpaid.

(b) When the articles of termination have been filed with the secretary of state, the LLC is terminated.

#### **SECTION 48-254-103.**

(a) An LLC may be dissolved by the members:

- (1) Upon any event of dissolution set forth in the LLC documents or this Act requiring member action;
- (2) By any procedures set forth in the LLC documents; or
- (3) By the members when authorized in the manner set forth in this section.

(b)



(1) The proposed dissolution must be submitted for approval at a meeting of members. Written notice in accordance with this Act and the LLC documents shall be given to each member, whether or not entitled to vote at a meeting of members, and whether the meeting is a regular or a special meeting. Such notice must state that a purpose of the meeting is to consider dissolving the LLC and that dissolution must be followed by the winding up and termination of the LLC.

(2) If the proposed dissolution is approved at a meeting by a majority vote or such other vote as may be provided for in the LLC documents, the LLC must be dissolved and notice of dissolution shall be filed with the office of the secretary of state pursuant to § 48-254-109.

**SECTION 48-254-104.**

(a) The secretary of state may commence a proceeding under § 48-254-105 to administratively dissolve the LLC if:

(1) The LLC does not deliver its properly completed annual report to the secretary of state within two (2) months after it is due;

(2) The LLC is without a registered agent or registered office in this state for two (2) months or more;

(3) The name of an LLC contained in a document filed pursuant to this Act fails to comply with the provisions of § 48-254-106;

(4) The LLC does not notify the secretary of state within two (2) months that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) The LLC submits to the secretary of state's office a check, bank draft, money order or other such instrument, for payment of any fee and it is dishonored upon presentation for payment; or

(6) A director, officer, manager, member or other representative of an LLC signed a document such person knew was false in any material respect with the intent that the document be delivered to the secretary of state for filing.

**SECTION 48-254-105.**

(a) If the secretary of state determines that one (1) or more grounds exist under § 48-254-104 for dissolving an LLC, the secretary of state shall serve the LLC with written communication of the secretary of state's determination in accordance with §§ 48-249-112 and 48-249-113, except that such determination may be sent by first class mail.

(b) If the LLC does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within two (2) months after service of the communication in accordance with §§ 48-249-112 and 48-249-113, the secretary of state shall administratively dissolve the LLC by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the LLC in accordance with §§ 48-249-112 and 48-249-113, except that the certificate may be sent by first class mail.

(c) An LLC that has been administratively dissolved continues its existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under § 48-254-101 and notify claimants under § 48-254-111.

(d) The administrative dissolution of an LLC does not terminate the authority of its registered agent.

**SECTION 48-254-106.**

(a) An LLC administratively dissolved under § 48-254-105 may apply to the secretary of state for reinstatement following administrative dissolution. The application must:

(1) Recite the name of the LLC at its date of administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(3) State an LLC name that satisfies the requirements of § 48-249-106;

(b) Certificate of Reinstatement.

(1) If the secretary of state determines that the application contains the information required by subsection (a) and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the LLC in accordance with § 48-249-112.

(2) If the LLC name in subsection (a)(3) is different than the LLC name in subsection (a)(1), the application for reinstatement shall constitute an amendment to the articles insofar as it pertains to the LLC's name.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the LLC resumes carrying on its business as if the administrative dissolution had never occurred.

**SECTION 48-254-107.**

(a) If the secretary of state denies an LLC's application for reinstatement following administrative dissolution, the secretary of state shall serve the LLC in

accordance with §§ 48-249-112 and 48-249-113 with a written notice that explains the reason or reasons for denial.

(b) The LLC may appeal the denial of reinstatement to the chancery court of Davidson County within thirty (30) days after service of the notice of denial. The LLC appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the LLC's application for reinstatement, and the secretary of state's notice of denial.

(c) The court may summarily order the secretary of state to reinstate the dissolved LLC or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

#### **SECTION 48-254-108.**

(a) When an LLC that has been administratively dissolved wishes to terminate its existence, it may do so without first being reinstated by delivering to the secretary of state for filing articles of termination following administrative dissolution setting forth:

(1) The name of the LLC;

(2) The date that termination of LLC existence was authorized;

(3) That the resolution authorizing termination was duly adopted by the members;

(4) A copy of the resolution or the written consent authorizing the termination; and

(5) That all the assets of the LLC have been distributed to its creditors and members.

(b) If the secretary of state finds that the articles of termination following administrative dissolution comply with the requirements of subsection (a), the secretary of state shall file the articles of termination following administrative dissolution. Upon

such filing, the existence of the LLC shall cease, except that the termination of LLC existence shall not take away or impair any remedy to or against the LLC or its members, directors, managers, or officers for any right or claim existing or any liability incurred, prior to such termination. Any such action or proceeding by or against the LLC may be prosecuted or defended by the LLC in its LLC name. The members, directors, managers, or officers shall have the power to take such LLC or other action as may be appropriate to protect such remedy, right, or claim.

**SECTION 48-254-109.**

(a) If dissolution of the LLC is approved pursuant to § 48-254-103, or if it occurs under § 48-254-101(a)(1), (2) or (7), the LLC shall file with the secretary of state a notice of dissolution. The notice must contain:

(1) The name of the LLC;

(2)

(A) If the dissolution is approved pursuant to § 48-254-103(b), a statement that the requisite vote of the members was received, or that members validly took action without a meeting;

(B) If the dissolution occurs under § 48-254-101(a)(1), by the expiration of the LLC's duration, a statement of the expiration date; and

(C) If the dissolution occurs under § 48-254-101(a)(2) or (7), a brief statement of the event that caused the dissolution and the date of that event.

(b) When the notice of dissolution has been filed with the secretary of state, the LLC shall cease to carry on its business, except to the extent necessary or appropriate for the winding up of the business of the LLC. The members shall retain the right to revoke the dissolution in accordance with § 48-254-113 and the right to remove or

appoint directors, managers, or officers. The LLC's existence continues to the extent necessary to wind up the affairs of the LLC until the dissolution is revoked or articles of termination are filed with the secretary of state.

(c) As part of winding up, the LLC may participate in a merger under § 48-255 of this title, but the dissolved LLC shall not be the surviving entity.

(d) The filing with the secretary of state of a notice of dissolution does not affect any remedy in favor of the LLC or any remedy against it or its members, directors, managers, or officers in those capacities, except as provided in § 48-254-111.

#### **SECTION 48-254-110.**

(a) If the business of the LLC is wound up and terminated by merging the dissolved LLC into a surviving entity:

(1) The procedures stated in § 48-255-102 must be followed; and

(2) §§ 48-254-109, 48-254-111, 48-254-112, 48-254-113 and 48-254-120 do not apply.

(b) If the business of the LLC is to be wound up and terminated other than by merging the dissolved LLC into a surviving entity, the procedures stated in subsections (c)-(e) must be followed.

(c) When a notice of dissolution has been filed with the secretary of state, the members of a member-managed LLC, the managers of a manager-managed LLC, or the board of directors of a director-managed LLC, as applicable, shall proceed as soon as possible to:

(1) Collect or make provision for the collection of all known debts due or owing to the LLC, including unperformed contribution agreements; and

(2) Except as provided in § 48-254-111, pay or make provision for the payment of all known debts, obligations, and liabilities of the LLC according to their priorities under § 48-254-120.

(d) Notwithstanding § 48-255-105, when a notice of dissolution has been filed with the secretary of state, the managers of a manager-managed LLC or the board of directors of a director-managed LLC may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolved LLC without a vote of the members.

(e) All tangible or intangible property, including money, remaining after the discharge of the debts, obligations, and liabilities of the LLC must be distributed to the members and holders of financial rights in accordance with § 48-254-120, subject to § 48-251-105(d).

#### **SECTION 48-254-111.**

(a) When a notice of dissolution has been filed with the secretary of state, and the business of the LLC is not to be wound up and terminated by merging the dissolved LLC into a successor organization under § 48-254-110(a), then the LLC may give notice of the filing to each creditor of and claimant against the LLC, known or unknown, present or future, and contingent or noncontingent, in accordance with subsections (b) and (c).

(b)

(1) An LLC may dispose of the known claims against it by following the procedure described in this subsection.

(2) The dissolved LLC shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must:

(A) Describe information that must be included in a claim;

(B) State whether the claim is admitted, or not admitted, and if admitted:

(i) The amount that is admitted, which may be as of a given date; and

(ii) Any interest obligation if fixed by an instrument of indebtedness;

(C) Provide a mailing address where a claim may be sent;

(D) State the deadline, which may not be fewer than four (4) months from the effective date of the written notice, by which the dissolved LLC must receive the claim; and

(E) State that, except to the extent that any claim is admitted, the claim will be barred if written notice of the claim is not received by the deadline.

(3) A claim against the dissolved LLC is barred to the extent that it is not admitted:

(A) If the dissolved LLC delivered written notice to the claimant in accordance with subsection (b)(2) and the claimant does not deliver a written notice of the claim to the dissolved LLC by the deadline; or

(B) If the dissolved LLC delivered written notice to the claimant that the claimant's claim is rejected, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within three (3) months from the effective date of the rejection notice.

(4) For purposes of this subsection (b), "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.



(5) For purposes of this subsection (b), written notice is effective at the earliest of the following:

(A) When received;

(B) Five (5) days after its deposit in the United States mail, if mailed correctly addressed and with first class postage affixed thereon;

(C) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

(D) Twenty (20) days after deposit in the United States mail, as evidenced by the postmark if mailed correctly addressed, and with other than first class, registered or certified postage affixed.

(c)

(1) A dissolved LLC may also publish notice of its dissolution and request that persons with claims against the LLC present them in accordance with the notice.

(2) The notice must:

(A) Be published one (1) time in a newspaper of general circulation in the county where the dissolved LLC's principal executive office is or was last located;

(B) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(C) State that a claim against the LLC will be barred unless a proceeding to enforce the claim is commenced within two (2) years after the publication of the notice.

(3) If the dissolved LLC publishes a newspaper notice as provided in this subsection (c), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved LLC within two (2) years after the publication date of the newspaper notice:

(A) A claimant who did not receive written notice under § 48-254-111(b);

(B) A claimant whose claim was timely sent to the dissolved LLC but not acted on; or

(C) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this subsection (c):

(A) Against the dissolved LLC, to the extent of its undistributed assets; or

(B) If the assets have been distributed in liquidation, against a member or holder of financial rights of the dissolved LLC to the extent of the member's or holder's pro rata share of the claim or the LLC assets distributed to the member or holder in liquidation, whichever is less, but a member's or holder's total liability for all claims under this subsection may not exceed the total amount of assets distributed to the member or holder.

(d) If the dissolved LLC does not comply with the provisions of subsections (b) and (c), then claimants against the LLC may enforce their claims:

(1) Against the dissolved LLC to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a member or holder of financial rights of the dissolved LLC to the extent of the member's or

holder's pro rata share of the claim or the LLC assets distributed to the member or holder in liquidation, whichever is less, but a member's or holder's total liability for all claims under this section may not exceed the total amount of assets distributed to the member or holder; provided, that a claim may not be enforced against a member or holder of a dissolved LLC who received a distribution in liquidation after three (3) years from the date of the filing of articles of termination.

**SECTION 48-254-112.**

(a) Articles of termination shall be filed with the secretary of state upon the dissolution and the completion of winding up of the LLC.

(b) Articles of termination shall set forth:

- (1) The name of the LLC;
- (2) The date of filing of its articles of organization;
- (3) The reason for the filing of the articles of termination;
- (4) Whether known and potential creditors and claimants have been notified of the dissolution under § 48-254-111; and
- (5) Any other information which the person filing the articles of termination determines necessary or desirable to include.

**SECTION 48-254-113.**

(a) In the case of dissolution by the members as provided in § 48-254-101(a)(3), an LLC may revoke its dissolution at any time prior to the filing of the articles of termination with the secretary of state, except as provided in subsection (d).

(b) Revocation of dissolution shall be authorized by the same vote of the members required to approve the dissolution, unless the authorization for dissolution permitted revocation by action by the board of directors or managers alone, as

applicable, in which event the board of directors or managers, as applicable, may revoke the dissolution without member action.

(c) After the revocation of dissolution is authorized, the LLC may revoke the dissolution by delivering to the office of the secretary of state for filing articles of revocation of dissolution that set forth:

(1) The name of the LLC;

(2) The effective date of the dissolution that was revoked;

(3) The date that the revocation of dissolution was authorized;

(4) If the directors of a director-managed LLC or the managers of a manager-managed LLC revoked a dissolution authorized by the members, a statement that revocation was permitted by action by the board of directors or managers alone, as applicable, pursuant to that authorization; and

(5) If member action was required to revoke the dissolution, a statement that the resolution was duly adopted by the members and a copy of the resolution or the written consent authorizing the revocation of dissolution.

(d) If a dissolved LLC is being wound up and terminated by being merged into a successor organization under § 48-254-110(a), pursuant to an agreement or plan of merger under § 48-255-102, then the dissolution may be revoked under this section only if the merger has been properly abandoned as expressly provided for under § 48-255-102(k).

#### **SECTION 48-254-114.**

When the articles of termination have been filed with the secretary of state, the existence of the LLC is terminated.

#### **SECTION 48-201-615.**

After an event of dissolution has occurred and before articles of termination have been filed, the LLC or, for good cause shown, a member or creditor may apply to a court within the county in which the LLC's principal executive office is or was last located to have the dissolution conducted or continued under the supervision of the court as provided in §§ 48-254-116-119.

**SECTION 48-254-116.**

A court may grant any equitable relief it considers just and reasonable in the circumstances or may dissolve an LLC and/or direct that the dissolved entity be merged into another or new LLC or other entity, or otherwise be terminated, on the terms and conditions the court deems equitable.

**SECTION 48-254-117.**

(a) On application by the attorney general and reporter or by or for a member, the court may decree dissolution, winding up and termination of an LLC whenever it is not reasonably practicable to carry on the business in conformity with the LLC documents.

(b) The dissolution is effective upon the decree of dissolution becoming final and non-appealable. Such decree shall be filed with the office of the secretary of state and shall serve as a notice of dissolution.

(c) The termination is effective upon a decree of termination becoming final and non-appealable. Such decree shall be filed with the office of the secretary of state and shall serve and have the same effect as articles of termination.

**SECTION 48-254-118.**

(a) Venue for a proceeding by the attorney general and reporter to dissolve and terminate an LLC lies in Davidson County. Venue for a proceeding brought by any other party lies in the county where the LLC's principal executive office is or was last located.

(b) It is not necessary to make members parties to a proceeding to dissolve and terminate an LLC unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve and terminate an LLC may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, as provided in § 48-254-119(c), take other action required to preserve the LLC's assets wherever located, and carry on the business of the LLC until a full hearing can be held.

(d) In a proceeding for dissolution, winding up and termination by a member, the petitioner shall execute and file in the proceeding a bond, with sufficient surety, to cover the defendant's probable costs, including reasonable attorney fees, in defending the petition. The court shall determine the amount of the bond and may award to any party its reasonable costs, including attorney fees, if it finds for such party in the proceeding.

#### **SECTION 48-254-119.**

(a) A court having equity jurisdiction in a judicial proceeding brought to dissolve and terminate an LLC may appoint one (1) or more receivers to wind up and liquidate, or one (1) or more custodians to manage the business and affairs of the LLC. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the LLC and all of its property wherever located.

(b) The court may appoint an individual or a domestic or foreign entity (authorized to transact business in this state) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) A receiver may:

(A) Dispose of all or any part of the assets of the LLC wherever located, at a public or private sale, if authorized by the court; and

(B) Sue and defend in the receiver's own name as receiver of the LLC in all courts of this state;

(2) A custodian may exercise all of the powers of the LLC, through or in place of its members, board of directors, managers, or officers, as applicable, to the extent necessary to manage the affairs of the LLC in the best interests of its members and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the LLC and its members and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the LLC or proceeds from the sale of the assets.

#### **SECTION 48-254-120.**

(a) Upon the winding up of an LLC, the assets shall be distributed as follows:

(1) To creditors, including members and holders of financial rights who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the LLC (whether by payment or the making of reasonable provisions for payment thereof) other than:

(A) Liabilities for which reasonable provision for payment has been made; and

(B) Liabilities for distributions to members under § 48-251-105;

(2) To members, former members and holders of financial rights in satisfaction of liabilities for distributions under § 48-251-105; and

(3) To members and holders of financial rights, first, for the return of their contributions which have not previously been returned, and, second, respecting the membership interests of members and the financial rights of holders of financial rights, as applicable, in the proportions in which the members and holders of financial rights, as applicable, share in distributions under § 48-251-105.

(4) Any distributions in any form other than cash shall be subject to § 48-251-105(d).

(b) An LLC which has dissolved shall pay or make reasonable operating provision to pay all claims and obligations, including all contingent, conditional or unmatured claims and obligations, known to the LLC and all claims and obligations which are known to the LLC but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor. Any remaining assets shall be distributed as provided in this Act. Any liquidating trustee winding up an LLC's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved LLC by reason of such person's actions in winding up the LLC.



(c) All known contractual debts, obligations, and liabilities incurred in the course of winding up and terminating the LLC's affairs must be paid or provided for by the LLC before the distribution of assets to a member. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy before the expiration of the applicable statute of limitations against the directors, managers or officers of the LLC, as applicable, who are responsible for, but who fail to cause, the LLC to pay or make provision for payment of the debts, obligations, and liabilities or against members to the extent permitted under section § 48-251-107. This subsection does not apply to dissolution and/or termination under the supervision or order of a court.

**SECTION 48-254-121.**

Title to assets remaining after payment of all debts, obligations, or liabilities and after distributions to members and holders of financial rights may be transferred by a court in this state.

**SECTION 48-254-122.**

After an LLC has been terminated, any of its former managers, directors, or members may assert or defend, in the name of the LLC, any claim by or against the LLC.

**SECTION 48-255-101.**

(a) The terms "other entity" and "another entity" each mean any domestic entity (other than a domestic LLC) or foreign entity, whether formed or organized under the laws of this state, the laws of any other state of the United States, the laws of the United States or the laws of any foreign country or other foreign jurisdiction.

(b) The term "domestic entity" means any entity formed or organized under the laws of this state.

(c) The term “foreign entity” means any entity formed or organized under the laws of any state of the United States other than this state, the laws of the United States or the laws of any foreign country or other foreign jurisdiction.

**SECTION 48-255-102.**

(a) One (1) or more domestic LLCs may, under an agreement or plan of merger, merge with or into one (1) or more domestic LLCs or other entities by complying with this section. Any constituent party to the merger may be the surviving entity as the agreement or plan of merger shall provide.

(b) If any constituent party to a merger is a foreign entity, the merger must be permitted under the laws of the jurisdiction of the foreign entity, and the foreign entity must comply with such laws. If any constituent party to a merger is a domestic entity, the merger must be permitted under the other laws of this state that apply to such domestic entity, and the domestic entity must comply with such laws.

(c) The agreement or plan of merger must be approved on behalf of any domestic LLC that is a constituent party to the merger by:

(1) A majority vote of the managers, if the LLC is manager-managed, or a majority vote of the directors, if the LLC is director-managed; and

(2) A majority vote of the members, whether the LLC is member-managed, manager-managed or director-managed.

(d) In connection with a merger under this section, rights or securities of, or other equity interests in, a domestic LLC or other entity that is a constituent party to the merger may be exchanged for or converted into cash, property, rights, or securities of, or interests in, the surviving domestic LLC or other entity or, in addition to or in lieu of that merger consideration, may be exchanged for or converted into cash, property, rights, or

securities of, or interests in, a domestic LLC or other entity that is not the surviving domestic LLC or other surviving entity in the merger.

(e) A domestic LLC merging under this section shall file in the office of the secretary of state a certificate of merger executed by one (1) or more authorized persons on behalf of the domestic LLC. The certificate of merger shall state:

(1) The name and jurisdiction of formation or organization of each constituent party to the merger;

(2) That an agreement or plan of merger has been approved and executed by each constituent party to the merger;

(3) The name of the surviving constituent party;

(4) In the case of a merger in which a domestic LLC is the surviving entity, such amendments, if any, to the articles of organization of the surviving domestic LLC as are desired to be effected by the merger;

(5) The future effective date or time of the merger if it is not to be effective upon the filing of the certificate of merger;

(6) That the agreement or plan of merger is on file at a place of business of the surviving constituent party and the address of that place of business;

(7) That a copy of the agreement or plan of merger will be furnished by the surviving constituent party, on request and without cost, to any person holding an interest in a constituent party to the merger; and

(8) If the surviving entity is a foreign entity, a statement that the surviving foreign entity agrees that it may be served with process in this state in any action, suit or proceeding for the enforcement of any obligation of any domestic LLC that is a constituent party to the merger, irrevocably appointing the secretary of state as its agent to accept service of process in any such action, suit or proceeding

and specifying the address to which a copy of such process shall be mailed to it by the secretary of state. In the event of service under this section upon the secretary of state, the procedures set forth in §48-249-113 of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the secretary of state with the address specified in the certificate of merger provided for in this section and any other address that the plaintiff may elect to furnish, together with copies of the process as required by the secretary of state, and the secretary of state shall notify the surviving other entity at all the addresses furnished by the plaintiff in accordance with the procedures set forth in § 48-249-113 of this title.

(f) Unless a future effective date or time is provided in a certificate of merger, in which event a merger shall be effective at that future effective date or time, a merger shall be effective upon filing a certificate of merger in the office of the secretary of state.

(g) A certificate of merger as filed with the office of the secretary of state shall act as notice of dissolution and articles of termination for a domestic LLC that is not the surviving entity in the merger. A merger of a domestic LLC, including a domestic LLC that is not the surviving entity in the merger, shall not require the domestic LLC to wind up its affairs under § 48-254-110 or pay its liabilities and distribute its assets under § 48-254-120.

(h) A certificate of merger that sets forth any amendment in accordance with subsection (e)(4) shall be deemed to be an amendment to the articles of organization of the surviving domestic LLC, and the surviving domestic LLC shall not be required to take any further action to amend its articles of organization under § 48-250-104 with respect to the amendments set forth in the certificate of merger.

(i) An agreement or plan of merger approved in accordance with subsection (c) may effect any amendment to the operating agreement of the surviving LLC in the merger or the adoption of a new operating agreement for the surviving LLC in the merger, provided that the amendment or new operating agreement receives the approval required for amendment of the operating agreement under § 48-250-104(c). Any amendment to an operating agreement or adoption of a new operating agreement made pursuant to the foregoing sentence shall be effective at the effective date and time of the merger.

(j) When any merger has become effective under this section, for all purposes of the laws of this state:

(1) All of the rights, privileges and powers of each constituent party to the merger and all property (real, personal and mixed) and all debts due to any constituent party to the merger, as well as all other things and causes of action belonging to each constituent party to the merger, shall be vested in the surviving constituent party and thereafter shall be the property of the surviving constituent party as they were of each constituent party to the merger prior to the merger;

(2) The title to any real property vested by deed or otherwise in any constituent party to the merger shall not revert or be in any way impaired by reason of this section;

(3) All rights of creditors and all liens upon any property of any constituent party to the merger shall be preserved unimpaired;

(4) All debts, liabilities, and obligations of each of the constituent parties that have merged shall thenceforth attach to the surviving constituent party, and may be enforced against it to the same extent as if said debts, liabilities, and obligations had been incurred or contracted by it; and

(5) An action or proceeding pending against an entity that is a constituent party to the merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party for any entity whose existence ceased in the merger.

(k) After an agreement or plan of merger has been approved as required by this section, and at any time before the merger has become effective, the merger may be abandoned (subject to any contractual rights) by any entity that is a constituent party to the merger in accordance with the procedures set forth in the agreement or plan of merger or, if no such procedures are set forth in the agreement or plan of merger, (1) by any domestic LLC that is a constituent party to the merger in a manner determined by the members with respect to a member-managed LLC, by the managers with respect to a manager-managed LLC, or by the directors with respect to a director-managed LLC, and (2) by another entity that is a constituent party to the merger in accordance with applicable law with respect to such other entity. If the merger is abandoned after the certificate of merger has been filed with the secretary of state but before the merger has become effective, a statement, executed on behalf of each constituent party to the merger by an officer or other duly authorized representative, stating that the merger has been abandoned in accordance with the agreement or plan of merger or this section, shall be filed with the secretary of state prior to the effectiveness of the merger.

(l) This section is nonexclusive. A domestic LLC may be merged in any other manner provided by law.

#### **SECTION 48-255-103.**

(a) Any other entity may convert to a domestic LLC by complying with this section and filing in the office of the secretary of state:

(1) A certificate of conversion to a domestic LLC that has been executed by one (1) or more authorized persons; and

(2) Articles of organization that comply with § 48-250-102 of this Act and have been executed by one (1) or more authorized persons.

(b) The certificate of conversion to a domestic LLC shall state:

(1) The jurisdiction and type of entity of the converting other entity immediately prior to its conversion to a domestic LLC;

(2) The name of the converting other entity immediately prior to the filing of the certificate of conversion to a domestic LLC;

(3) The name of the domestic LLC as set forth in its articles of organization filed in accordance with subsection (a) of this section;

(4) That all required approvals of the conversion have been obtained by the converting other entity; and

(5) The future effective date or time of the conversion to a domestic LLC if it is not to be effective upon the filing of the certificate of conversion to a domestic LLC and the articles of organization.

(c) Upon the filing in the office of the secretary of state of the certificate of conversion to a domestic LLC and the articles of organization of the domestic LLC or upon the future effective date or time of the certificate of conversion to a domestic LLC and the articles of organization of the domestic LLC, the other entity shall be converted into a domestic LLC and the domestic LLC shall thereafter be subject to all of the provisions of this title, except that notwithstanding § 48-250-101 of this Act, the existence of the domestic LLC shall be deemed to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first created, formed, incorporated or otherwise came into being.

(d) The conversion of any other entity into a domestic LLC shall not be deemed to affect any debts, liabilities, and obligations of the other entity incurred prior to its conversion to a domestic LLC or the personal liability of any person incurred prior to the conversion.

(e) When any conversion of another entity to a domestic LLC has become effective under this section, for all purposes of the laws of this state:

(1) The domestic LLC shall be deemed to be the same entity as the converting other entity;

(2) All of the rights, privileges and powers of the converting other entity, and all property (real, personal and mixed) and all debts due to the converting other entity, as well as all other things and causes of action belonging to the converting other entity, shall be and remain vested in the domestic LLC and shall be the property of the domestic LLC;

(3) Title to any real property vested by deed or otherwise in the converting other entity shall not revert or be in any way impaired by reason of this section;

(4) All rights of creditors and all liens upon any property of the converting other entity shall be preserved unimpaired;

(5) All debts, liabilities, and obligations of the converting other entity shall remain attached to the domestic LLC, and may be enforced against it to the same extent as if said debts, liabilities, and obligations had originally been incurred or contracted by it in its capacity as an domestic LLC;

(6) Any action or proceeding pending against the converting other entity may be continued against the domestic LLC as if the conversion had not occurred; and



(7) The rights, privileges, powers and interests in property of the converting other entity, as well as the debts, liabilities, and obligations of the converting other entity, shall not be deemed, as a consequence of the conversion, to have been transferred to the domestic LLC for any purpose of the laws of this state.

(f) The converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the entity and shall constitute a continuation of the existence of the converting other entity in the form of a domestic LLC.

(g) If the converting other entity is a foreign entity, the conversion must be permitted under the laws of the jurisdiction of the other entity and the other entity must comply with such laws. If the converting other entity is a domestic entity, the conversion must be permitted under the other laws of this state that apply to such domestic entity, and the domestic entity must comply with such laws.

(h) Prior to filing a certificate of conversion of another entity to a domestic LLC with the office of the secretary of state:

(1) The conversion shall be approved in the manner provided for by applicable laws of the jurisdiction of formation or organization of the converting other entity and by any document, instrument, agreement or other writing governing the internal affairs of the other entity and the conduct of its business, as appropriate; and

(2) The articles of organization and operating agreement, as applicable, for the domestic LLC, shall be approved by the same authorization required for the converting other entity to approve the conversion.

(i) In connection with a conversion of another entity to a domestic LLC hereunder, rights or securities of or interests in the converting other entity may be exchanged for or converted into cash, property, or rights or securities of or interests in the domestic LLC or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property or rights or securities of or interests in another domestic LLC or other entity, or may be cancelled.

(j) This section is nonexclusive. Any other entity may be converted to a domestic LLC in any other manner provided by law.

#### **SECTION 48-255-104.**

(a) Upon compliance with this section, a domestic LLC may convert to another entity by filing in the office of the secretary of state:

(1) A certificate of conversion pursuant to subsection (f) that has been executed by one (1) or more authorized persons; and

(2) If the other entity into which the domestic LLC is to be converted is an entity organized under the laws of this state, the formational or organizational document, if any, required by other laws of this state to be filed with the secretary of state in connection with the organization or formation of such other domestic entity, which formational or organizational document has been executed by one (1) or more authorized persons in accordance with the applicable law of this state with respect to such formational or organizational document.

(b) If the domestic LLC is to be converted into a foreign entity, the conversion must be permitted under the laws of the jurisdiction of the foreign entity, and the foreign entity must comply with such laws. If the domestic LLC is to be converted into a domestic entity (other than a domestic LLC), the conversion must be permitted under the

other laws of this state that apply to such domestic entity, and the domestic entity must comply with such law.

(c) The conversion of a domestic LLC to another entity must be approved by:

(1) A majority vote of the managers, if the LLC is manager-managed, or a majority vote of the directors, if the LLC is director-managed; and

(2) A majority vote of the members, whether the LLC is member-managed, manager-managed or director-managed.

(d) The conversion of a domestic LLC to another entity in accordance with this section shall not require the domestic LLC to wind up its affairs under § 48-254-110 or pay its liabilities and distribute its assets under § 48-254-120.

(e) In connection with the conversion of a domestic LLC to another entity in accordance with this section, rights or securities of or interests in the domestic LLC may be exchanged for or converted into cash, property, rights or securities of or interests in the business form into which the domestic LLC is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in another entity, or may be cancelled.

(f) The certificate of conversion shall state:

(1) The name of the domestic LLC and, if it has been changed, the name under which its articles of organization were originally filed;

(2) The date of filing of the original articles of organization of the domestic LLC with the secretary of state;

(3) The name of the other entity into which the domestic LLC is to be converted and the jurisdiction and type of entity of the other entity;

(4) The future effective date or time of the conversion, if it is not to be effective upon the filing of the certificate of conversion;

(5) That all required approvals of the conversion have been obtained by the domestic LLC; and;

(6) If the domestic LLC is converted to a foreign entity, a statement that the foreign entity agrees that it may be served with process in this state in any action, suit or proceeding for the enforcement of any obligation of the domestic LLC arising prior to the date of the conversion, irrevocably appointing the secretary of state as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the secretary of state. In the event of service under this section upon the secretary of state, the procedures set forth in § 48-249-113 of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the secretary of state with the address specified in the certificate of conversion provided for in this section and any other address that the plaintiff may elect to furnish, together with copies of the process as required by the secretary of state, and the secretary of state shall notify the converted entity at all the addresses furnished by the plaintiff in accordance with the procedures set forth in § 48-249-113 of this title.

(g) The conversion of a domestic LLC to another entity in accordance with this section and the resulting cessation of its existence as a domestic LLC pursuant to a certificate of conversion shall not be deemed to affect any debts, liabilities, and obligations of the domestic LLC incurred prior to the conversion or the personal liability of any person incurred prior to the conversion, nor shall it be deemed to affect the law applicable to the domestic LLC with respect to matters arising prior to the conversion.

(h) When any conversion of a domestic LLC to another entity has become effective under this section, for all purposes of the laws of the this state:

(1) The converted other entity shall be deemed to be the same entity as the domestic LLC;

(2) All of the rights, privileges and powers of the domestic LLC, and all property (real, personal and mixed) and all debts due to the domestic LLC, as well as all other things and causes of action belonging to the converted other entity, shall be and remain vested in the converted other entity and shall be the property of the converted other entity;

(3) Title to any real property vested by deed or otherwise in the domestic LLC shall not revert or be in any way impaired by reason of this section;

(4) All rights of creditors and all liens upon any property of the LLC shall be preserved unimpaired;

(5) All debts, liabilities, and obligations of the domestic LLC shall remain attached to the converted other entity, and may be enforced against it to the same extent as if said debts, liabilities, and obligations had originally been incurred or contracted by it in its capacity as the converted other entity;

(6) Any action or proceeding pending against the domestic LLC may be continued against the converted other entity as if the conversion had not occurred; and

(7) The rights, privileges, powers and interests in property of the domestic LLC, as well as the debts, liabilities, and obligations of the domestic LLC, shall not be deemed, as a consequence of the conversion, to have been transferred to the converted other entity for any purpose of the laws of this state.

(i) This section is nonexclusive. Any domestic LLC may be converted to another entity in any other manner provided by law.

**SECTION 48-255-105.**

(a) The sale, lease, transfer or other disposition by an LLC of all or substantially all of its property and assets not in the usual and regular course of business must be approved by:

(1) A majority vote of the managers, if the LLC is manager-managed, or a majority vote of the directors, if the LLC is director-managed; and

(2) A majority vote of the members, whether the LLC is member-managed, manager-managed or director-managed.

(b) The transferee of assets under this section is liable for the debts, obligations and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor with respect to the transfer of assets or to the extent provided by this Act or other applicable law.

#### **SECTION 48-255-106.**

The LLC documents or an agreement or plan of merger may provide that contractual appraisal rights with respect to a membership interest, financial rights or another interest in the LLC shall be available for any class or group of members or holders of financial rights in the LLC in connection with any amendment of the LLC documents, any merger in which the LLC is a constituent party to the merger, any conversion of the LLC to another entity, the sale, lease, transfer or other disposition by the LLC of all or substantially all of its property and assets not in the usual and regular course of business, or any other action or event affecting the LLC.

#### **SECTION 48-256-101.**

(a) A member or holder of financial rights of a director-managed LLC or of a manager-managed LLC may bring an action in the right of an LLC to recover a judgment in its favor if:

(1) The member or holder of financial rights, as applicable, was a member or holder of financial rights of such LLC when the transaction complained of occurred; or

(2) The member or holder of financial rights, as applicable, became a member or holder of financial rights through transfer by operation of law from one who was a member or holder of financial rights, as applicable, when the transaction complained of occurred.

(b) A member or holder of financial rights of a member-managed LLC may bring an action in the right of an LLC to recover a judgment in its favor if members or other persons with authority to do so have refused to bring the action or if an effort to cause those members or other persons to bring the action is not likely to succeed.

#### **SECTION 48-256-102.**

A complaint in a proceeding brought in the right of an LLC must allege with particularity the demand made, if any, to obtain action by the directors, managers, officers, or members or other persons with the authority to act, as applicable, and either that the demand was refused or ignored or why the member or holder of financial rights, as applicable, did not make the demand.

#### **SECTION 48-256-103.**

A proceeding commenced under this chapter may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the LLC or a class of members and/or holders of financial rights, the court shall direct that notice be given the members and/or holders of financial rights affected. If notice is so directed to be given, the court may determine which one (1) or more parties to the suit shall bear the expense of giving such notice, in such proportions as the court

finds to be reasonable in the circumstances, and the amount of such expense shall be awarded as special costs of the suit and recoverable in the same manner as other taxable costs.

**SECTION 48-256-104.**

(a) On termination of the proceeding, the court may require the plaintiff to pay any defendant's reasonable expenses (including attorneys' fees) incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

(b) If a derivative action is successful in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees. If anything is so received by the plaintiff, the court shall make such award of the plaintiff's expenses payable out of those proceeds and direct the plaintiff to remit to the LLC the remainder thereof, and if those proceeds are insufficient to reimburse the plaintiff's reasonable expenses, the court may direct that any such award of the plaintiff's expenses or portion thereof be paid by the LLC.

**SECTION 48-256-105.**

If an LLC or its officer, manager, director or member or other person with the authority to act violates a provision of this Act, a court in this state may, in an action brought by a member or holder of financial rights of the LLC, grant any equitable relief it considers just and reasonable in the circumstances and award expenses, including attorneys' fees and disbursements, to the member or holder of financial rights, as applicable.

**SECTION 48-257-101.**

(a) Subject to the Constitution of Tennessee:

(1) The laws of the jurisdiction under which a foreign LLC is formed or organized govern its formation or organization and internal affairs and the liability of its members



and representatives, regardless of whether the foreign LLC procured or should have procured a certificate of authority under this chapter; and

(2) Except as provided in title 48, chapter 246, a foreign LLC may not be denied a certificate of authority to transact business in this state by reason of any difference between the laws of the jurisdiction of its organization and the laws of this state.

**SECTION 48-257-102.**

(a) The following activities of a foreign LLC, among others, do not constitute transacting business within the meaning of this chapter or § 48-258-114:

- (1) Maintaining, defending, or settling any proceeding, claim, or dispute;
- (2) Holding meetings of its members or representatives or carrying on any other activities concerning its internal affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign LLC's own securities or appointing and maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or through representatives or otherwise, if the orders require acceptance outside this state before they become contracts;
- (7) Creating or acquiring indebtedness, deeds of trust, mortgages, and security interests in real or personal property;
- (8) Securing or collecting debts or enforcing mortgages, deeds of trust, and security interests in property securing the debts;
- (9) Owning, without more, real or personal property; provided, that for a reasonable time the management and rental of real property acquired in

connection with enforcing a mortgage or deed of trust shall also not be considered transacting business if the owner is attempting to liquidate the investment and if no office or other agency therefor, other than an independent agency, is maintained in this state;

(10) Conducting an isolated transaction that is completed within one (1) month and that is not one in the course of repeated transactions of a like nature; or

(11) Transacting business in interstate commerce.

(b) An organization formed or organized under the laws of any foreign jurisdiction or the laws of any jurisdiction other than the state of Tennessee shall not be deemed to be doing business in Tennessee for purposes of obtaining a certificate of authority to do business solely by reason of its being or acting in its capacity as a member or manager of a domestic or foreign LLC.

(c) The enumeration of activities in subsections (a) and (b) is not exhaustive, and is applicable solely to determine whether a foreign LLC must procure a certificate of authority and for no other purpose. This section does not apply in determining the contacts or activities that may subject a foreign LLC or its members to service of process or taxation in this state or to regulation under any other law of this state.

#### **SECTION 48-257-103.**

(a) A foreign LLC name shall meet the requirements of § 48-249-106.

(b) A foreign LLC may apply to the office of the secretary of state under § 48-249-106 to utilize an indistinguishable name.

(c) A foreign LLC may elect to adopt an assumed name under § 48-249-106 and to renew such assumed name.

(d) A foreign LLC may, pursuant to § 48-249-106, cancel an assumed name.

(e) A foreign LLC may, pursuant to § 48-249-107, reserve a name, renew a reserved name and transfer or cancel a reserved name.

(f) A foreign LLC may obtain and retain a registered name by complying with § 48-249-108.

#### **SECTION 48-257-104.**

(a) Before doing business in this state, a foreign LLC shall obtain a certificate of authority. An applicant for the certificate shall file with the office of the secretary of state an original copy of the application executed by the foreign LLC and setting forth:

(1) The name of the foreign LLC;

(2) The jurisdiction and date of its organization;

(3) The street address, including zip code, of its registered office in this state and the name of its registered agent at that office;

(4) The street address, including zip code, of the office required to be maintained in the jurisdiction of its organization by the laws of that jurisdiction or, if not so required, of the principal executive office of the foreign LLC or its equivalent; and

(5) If the foreign LLC has more than six (6) members at the date of the filing of the application for the certificate of authority, the number of members of the LLC at the date of filing the application for the certificate of authority.

(b) The foreign LLC shall deliver with the completed application a certificate of existence (or document of similar import) duly authenticated by the secretary of state or other official having custody of LLC records in the jurisdiction of its organization. The certificate shall not bear a date of more than two (2) months prior to the date the application for the certificate of authority is filed in this state.

#### **SECTION 48-257-105.**

(a) If a document delivered to the office of the secretary of state conforms to the requirements of § 48-257-104(a) and all fees have been paid, the secretary of state shall:

(1) Endorse on the application the word "Filed" and the date and time of the filing of it;

(2) File the original of the application; and

(3) Return the original of the application, together with the filing fee receipt, to the person who filed it and such document shall constitute a certificate of authority issued by the secretary of state.

(b) The certificate of authority is effective from the date the application is filed with the secretary of state, as evidenced by the secretary of state's date and time endorsement on the original document, accompanied by the payment of the requisite fee.

#### **SECTION 48-257-106.**

If any statement in the application for a certificate of authority by a foreign LLC was false when made or any matter described in the application has changed, making the application inaccurate in any respect, the foreign LLC shall promptly file with the secretary of state an application for amendment to the certificate of authority, executed by an authorized person correcting the statement; provided, that changes in the registered office or registered agent shall be made in accordance with § 48-257-104. The application for amendment to the certificate of authority shall be processed in the same manner as provided in § 48-257-105 for a certificate of authority.

#### **SECTION 48-257-107.**

(a) A foreign LLC may cancel its certificate of authority by filing with the secretary of state a certificate of cancellation of authority executed by the foreign LLC, setting forth:

(1) The name of the foreign LLC, and, if different, the name under which it does business in Tennessee;

(2) The name of the jurisdiction under whose law it was organized;

(3) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(4) That it either continues its registered agent in this state or revokes the authority of the registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(5) A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (a)(4); and

(6) A commitment to notify the secretary of state in the future of any change in mailing address.

(b) After cancellation of the certificate of authority of the foreign LLC, service of process on the secretary of state or the continued registered agent under this section is service on the foreign LLC. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign LLC at the mailing address set forth under subsection (a)(5).

**SECTION 48-257-108.**

(a) The secretary of state may commence a proceeding under § 48-257-109 to revoke the certificate of authority of a foreign LLC authorized to transact business in this state if:

(1) The foreign LLC does not deliver its annual report to the secretary of state within two (2) months after it is due;

(2) The foreign LLC is without a registered agent or registered office in this state for two (2) months or more;

(3) The foreign LLC does not inform the secretary of state under § 48-249-110 or § 48-249-111 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within two (2) months of the change, resignation, or discontinuance;

(4) The name of the foreign LLC contained in a document filed pursuant to this title fails to comply with the provisions of § 48-257-103;

(5) A member or representative of the foreign LLC signed a document such person knew was false in any material respect with the intent that the document be delivered to the secretary of state for filing;

(6) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of the foreign LLC's records in the jurisdiction under whose law the foreign LLC is organized, stating that it has been terminated or has disappeared as the result of a merger;

(7) The foreign LLC is exceeding the authority conferred upon it by this chapter; or

(8) The foreign LLC submits to the office of the secretary of state a check, bank draft, money order or other such instrument for payment of any fee and it is dishonored upon presentation for payment.

**SECTION 48-257-109.**

(a) If the secretary of state determines that one (1) or more grounds exist under § 48-257-108 for revocation of a certificate of authority, the secretary of state shall serve the foreign LLC with written communication of the secretary of state's determination, except that such determination may be sent by first class mail. Notice need not be sent if the grounds for revocation are pursuant to § 48-257-108(5) and a certificate of revocation may be sent without the two (2) month waiting period required by subsection (b).

(b) If the foreign LLC does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within two (2) months after service of the communication, the secretary of state may revoke the foreign LLC's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign LLC, except that the certificate may be sent by first class mail.

(c) The authority of a foreign LLC to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The secretary of state's revocation of a foreign LLC's certificate of authority appoints the secretary of state the foreign LLC's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign LLC was authorized to transact business in this state. Service of process on the secretary of state

under this subsection is service on the foreign LLC. Upon receipt of process, the secretary of state shall comply with the provisions of § 48-249-113.

(e) Revocation of a foreign LLC's certificate of authority does not terminate the authority of the registered agent of the LLC.

**SECTION 48-257-110.**

(a) A foreign LLC whose certificate of authority is administratively revoked under § 48-257-109 may apply to the secretary of state for reinstatement. The application must:

(1) Recite the name of the foreign LLC at its date of revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) State a foreign LLC name that satisfies the requirements of [§ 48-257-103.

(b)

(1) If the secretary of state determines that the application contains the information required by subsection (a) and that the information is correct, the secretary of state shall reinstate the certificate of authority, prepare a certificate that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign LLC; and

(2) If the foreign LLC name in subsection (a)(3) is different than the foreign LLC name in subsection (a)(1), the application for reinstatement shall constitute an amendment to its certificate of authority insofar as it pertains to the foreign LLC name.



(c) When the reinstatement is effective, it relates back and takes effect as of the effective date of the administrative revocation and the foreign LLC resumes carrying on its business as if the administrative revocation had never occurred.

**SECTION 48-257-111.**

(a) If the secretary of state denies a foreign LLC's application for reinstatement following administrative revocation, the secretary of state shall serve the foreign LLC with a writing that explains the reason or reasons for denial.

(b) The foreign LLC may appeal the denial of reinstatement to the chancery court of Davidson County within one (1) month after service of the writing by petitioning the court to set aside the revocation and attaching to the petition copies of the secretary of state's writing.

(c) The court's final decision may be appealed as in other civil proceedings.

**SECTION 48-257-112.**

(a) When a foreign LLC that has had its certificate of authority revoked wishes to withdraw from this state, it may do so without first being reinstated by delivering to the secretary of state for filing a certificate of cancellation of authority following administrative revocation of the certificate of authority. The application shall set forth:

(1) The name of the foreign LLC and the date of revocation, its current name, if different, and the name of the jurisdiction under whose law it is organized;

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That it either continues its registered agent in this state or revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on

a cause of action arising during the time it was authorized to transact business in this state;

(4) A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (a)(3); and

(5) A commitment to notify the secretary of state in the future of any change in its mailing address.

(b) After cancellation of the certificate of authority of the foreign LLC, service of process on the secretary of state or the continued registered agent under this section is service on the foreign LLC. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign LLC at the mailing address set forth under subsection (a)(4).

#### **SECTION 48-257-113.**

(a) A foreign LLC transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign LLC that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding on behalf of its predecessor based on an assigned cause of action in any court in this state until the foreign LLC or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign LLC, its successor or assignee, until it determines whether the foreign LLC or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign LLC or its successor obtains the certificate.

(d) A foreign LLC doing business in this state without first having obtained a certificate of authority shall be fined and shall pay to the secretary of state three (3) times the otherwise required filing fee for each year or part thereof during which the foreign LLC failed to have such certificate of authority.

(e) An application for a certificate of authority by a foreign LLC that has transacted business in this state without a certificate of authority shall not be filed by the secretary of state until all amounts due under subsection (d) have been paid.

(f) Notwithstanding subsections (a) and (b), the failure of a foreign LLC to obtain a certificate of authority does not impair:

(1) The validity of any contract or act of the foreign LLC;

(2) The right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or

(3) The foreign LLC from defending any action, suit, or proceeding in any court of the state of Tennessee.

(g) A member or representative of a foreign LLC is not liable for the debts and obligations of the foreign LLC solely by reason of the company's having transacted business in this state without a valid certificate of authority.

#### **SECTION 48-257-114.**

The attorney general and reporter shall, upon the attorney general and reporter's own motion or upon the relation of proper parties, proceed by complaint in the chancery court of Davidson County or in the chancery court of any county in which such foreign LLC is doing or has done business to enjoin any foreign LLC, or any representative thereof, from doing any business in the state of Tennessee if such foreign LLC has failed to obtain or maintain a certificate of authority or if such foreign LLC has secured a certificate of authority from the secretary of state under § 48-257-104 on the basis of false or misleading representations. The

reasonable attorney fees and expenses of such an action by the attorney general and reporter may be recovered from the foreign LLC at the discretion of the court if an injunction is obtained.

**SECTION 48-258-101.**

The general assembly has the power to amend or repeal all or part of this Act at any time, and all domestic and foreign LLCs subject to this Act shall be governed by the amendment or repeal.

**SECTION 48-258-102.**

(a) Except as provided in subsection (b), the provisions of this Act apply to every domestic LLC formed from and after January 1, 2006, and to the outstanding and future interests in such LLCs; provided, however, that if there are other specific statutory provisions which govern the formation of, impose restrictions or requirements on, confer special powers, privileges or authorities on, or fix special procedures or methods for, special categories of LLCs, then to the extent such provisions are inconsistent with or different from this Act, such provisions shall prevail.

(b) After January 1, 2006, a domestic LLC formed prior to that date under the Prior Act may voluntarily elect to be governed by this Act by amending its articles of organization to include the statement "This LLC elects to be governed by the Tennessee Revised Limited Liability Company Act," or a statement of like import. Such election and amendment to the articles must be approved by consent of all the members.

(c) Any LLC formed prior to January 1, 2006, under the Prior Act that does not voluntarily elect to be governed by this Act pursuant to § 48-258-102(b) shall continue to be governed by the Prior Act.

(d) This Act shall apply to every foreign LLC that first files an application for a certificate of authority from and after January 1, 2006. With respect to each foreign LLC that first filed an application for a certificate of authority prior to January 1, 2006, the

Prior Act shall apply to such foreign LLC until the due date of the first annual report required to be filed by such foreign LLC after January 1, 2006, after which due date this Act shall apply to such foreign LLC.

(e) This Act does not affect an action or proceeding commenced or right accrued under the Prior Act.

#### **SECTION 48-258-103.**

For purposes of all state and local Tennessee taxes, a foreign or domestic LLC shall be treated as a partnership or an association taxable as a corporation as such classification is determined for federal income tax purposes. The members of a foreign LLC treated as a partnership are subject to all state and local Tennessee taxes in the same manner and extent as partners in a foreign partnership. The members of a domestic LLC are subject to all state and local Tennessee taxes in the same manner and extent as partners in a domestic partnership.

#### **SECTION 48-258-104.**

(a) The liability of a member, holder of financial rights, director, manager, officer, employee, or agent of an LLC formed and existing under this Act shall at all times be governed by this Act and the laws of this state.

(b) If a conflict arises between the laws of this state and the laws of any other jurisdiction with regard to the liability of a member, holder of financial rights, director, manager, officer, employee, or agent of an LLC formed and existing under this Act for the debts, obligations and liabilities of the LLC, or for the acts or omissions of another member, holder of financial rights, director, manager, officer, employee, or agent of the LLC, this Act and the laws of this state shall govern in determining such liability.

#### **SECTION 48-258-105.**

(a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

(b) This Act must require or permit filing the document in the office of the secretary of state.

(c) The document must contain the information required by this Act. It may contain other information as well.

(d) The document must be typewritten or printed in ink in a clear and legible fashion on one (1) side of letter or legal size paper.

(e) The document must be in the English language. An LLC's or other entity's name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence or equivalent required of foreign business entities need not be in English, if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) By the chair of the board of directors, the president, or another of the authorized officers if a corporate action is taken by a domestic or foreign corporation, by a member, manager or authorized officer if an LLC action is taken, by a general partner if a partnership action is taken or by the equivalent person of another entity;

(2) If directors of a corporation or director-managed LLC, or managers of a manager-managed LLC, have not been selected or the corporation or LLC has not been formed, by an incorporator or organizer; or

(3) If the entity is in the hands of a receiver, custodian, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing the document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the person signs.

The document may but need not contain:

(1) An attestation by the secretary or an assistant secretary of a corporation;

(2) An acknowledgment, verification, or proof; or

(3) The date the document is signed, except that such date shall be required for the annual report for the secretary of state.

(h) If the secretary of state pursuant to statutory authority has prescribed a mandatory form for the document, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the secretary of state for filing and must be accompanied by the current filing fee, and any tax, license fee, interest, or penalty required by this Act.

(j) The document must contain a statement which makes it clear that it is being filed pursuant to the Tennessee Revised Limited Liability Company Act.

(k) The secretary of state has the power to promulgate appropriate rules and regulations establishing acceptable methods for execution of any document to be filed with the secretary of state.

(l) Notwithstanding any other provision of the law to the contrary, whenever this Act requires that an application or other document submitted to the secretary of state for filing be accompanied by a certificate from the commissioner of revenue reciting that the business has properly filed all reports and paid all required taxes and penalties, the certificate requirement shall be met, and a paper certificate need not accompany the application or other document, if the commissioner provides to the secretary of state electronic verification of the required information. Upon request of the person seeking

certificate information, the commissioner shall provide to the secretary of state electronic verification in lieu of a paper certificate.

(m) Any LLC that has not timely filed with the department of revenue such information as has been required by the commissioner of revenue under prior law (Acts 1997, ch. 421, § 1) shall be subject to administrative dissolution in accordance with the procedures specified in § 48-254-105. The certificate of authority of any foreign LLC that has not timely filed such information with the department shall be subject to revocation as provided in § 48-258-109. Upon certification by the commissioner of revenue that an LLC has complied with the information reporting requirements that were required under prior law, an LLC that has been administratively dissolved or that has had its certificate of authority revoked for failure to timely file such information may be reinstated.

**SECTION 48-201-1006. Forms.**

(a) The secretary of state may prescribe and furnish on request a form for the annual report required by § 48-258-117. The use of any such form prescribed by the secretary of state shall be mandatory.

(b) The secretary of state may prescribe and, if prescribed by the secretary of state, shall furnish on request forms for other documents required or permitted to be filed by this Act but their use is not mandatory.

**SECTION 48-258-107.**

(a) The office of the secretary of state shall collect the following fees when the documents described in this Act are delivered for filing, and for purposes of this Act, no document is considered delivered to the office of the secretary of state for filing unless accompanied by such fee:

Document	<u>Fee</u>
(1) Articles including designation of initial registered office and	As provided in



Document	<u>Fee</u>
agent	subsection (d)
(2) Certificate of formation	\$20.00
(3) Certificate of conversion	As provided in subsection (d)
(4) Application for reserved LLC name	\$20.00
(5) Application for use of indistinguishable name	\$20.00
(6) Notice of transfer or cancellation of reserved name	\$20.00
(7) Application for and renewal of registered name	\$20.00
(8) Application for or change, cancellation, or renewal of assumed name	\$20.00
(9) LLC's statement of change of registered agent, registered office, or both	\$20.00
(10) Agent's statement of change of registered office	\$5.00 per limited liability company, but not less than 20.00
(11) Agent's statement of resignation	\$20.00
(12) Articles of amendment	\$20.00
(13) Amended and restated articles	\$20.00
(14) Restatement of articles	\$20.00
(15) Articles of correction	\$20.00
(16) Certificate of merger	\$100.00
(17) [Reserved.]	
(18) Articles of termination by organizers	\$20.00
(19) Notice of dissolution	\$20.00

Document	<u>Fee</u>
(20) Articles of revocation of dissolution	\$20.00
(21) Articles of termination	\$20.00
(22) Certificate of administrative dissolution	No fee
(23) Application for reinstatement following administrative dissolution	\$70.00
(24) Articles of termination following administrative dissolution	\$100.00
(25) Certificate of reinstatement	No fee
(26) Decree of judicial dissolution	No fee
(27) Application for certificate of authority (including designation of initial registered office and agent)	As provided in subsection (d)
(28) Application for amended certificate of authority	\$20.00
(29) Certificate of cancellation of authority	\$20.00
(30) Certificate of administrative revocation of certificate of authority	\$No fee
(31) Certificate of cancellation following administrative revocation	\$100.00
(32) Application for reinstatement following administrative revocation	\$70.00
(33) Annual report	As provided in subsection (d)
(34) Any other document required or permitted to be filed by this Act	\$20.00

(b) The secretary of state shall collect a fee of twenty dollars (\$20.00) each time process is served on the secretary of state under this Act. The party to a proceeding

causing service of process is entitled to recover this fee as costs if it prevails in the proceeding.

(c) The secretary of state shall collect a fee of twenty dollars (\$20.00) for copying all filed documents relating to a domestic or foreign LLC. All such copies will be certified or validated by the secretary of state.

(d) The secretary of state shall collect from each LLC or foreign LLC, if applicable, an annual fee equal to fifty dollars (\$50.00) per each LLC member in existence on the date of the initial filing, and each year thereafter based on the number of LLC members in existence on the date of the filing for the annual report, with a minimum fee of three hundred dollars (\$300) and a maximum fee of three thousand dollars (\$3,000). Notwithstanding the provisions of this subsection (d), if the LLC is prohibited by its articles from doing business in Tennessee, the filing fee shall be three hundred dollars (\$300) regardless of the number of members in existence on the date of filing.

(e) In addition to the other filing requirements of this Act, a copy of all documents specified in subsections (a) (1), (12), (13), (14), (15), (16), (18), (19) and (20) shall also be filed in the office of the register of deeds in the county wherein an LLC has its principal executive office, if such principal executive office is in Tennessee, and in the case of a merger, in the county in which the new or surviving LLC shall have its principal executive office, if such principal executive office is in Tennessee. The register of deeds may charge five dollars (\$5.00) plus fifty cents (50¢) per page in excess of five (5) pages for such filing.

#### **SECTION 48-258-108.**

(a) A domestic or foreign LLC may correct a document filed with the office of the secretary of state if the document:

- (1) Contains an incorrect statement; or
- (2) Was defectively executed, attested, sealed, certified, or acknowledged.

(b) A document is corrected:

(1) By preparing articles of correction that:

(A) Describe the document (including its filing date) or attach a copy of it to the articles;

(B) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(C) Correct the incorrect statement or defective execution; and

(2) By delivering the articles of correction to the office of the secretary of state for filing.

(c) Articles of correction are effective on the effective time and date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

#### **SECTION 48-258-109.**

(a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of § 48-258-105, the secretary of state shall file it.

(b) The secretary of state files a document by stamping or otherwise endorsing "Filed," together with the secretary of state's name and official title and the date and time of receipt, on such document. After filing a document, except for filings pursuant to §§ 48-249-111 and 48-258-117], the secretary of state shall deliver the document, with the filing fee receipt (or acknowledgment of receipt if no fee is required) attached, to the domestic or foreign LLC or its representative in due course. A domestic or foreign LLC or

its representative may present to the office of the secretary of state an exact or conformed copy of the document presented for filing together with such document, and, in that event, the secretary of state shall stamp or otherwise endorse the exact or conformed copy filed, together with the secretary of state's name and official title and the date and time of receipt, and immediately return the exact or conformed copy to the party filing the original of such document.

(c) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign LLC or its representative immediately after the document was received for filing, together with a brief, written explanation of the reason for such refusal.

(d) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:

- (1) Affect the validity or invalidity of the document in whole or in part;
- (2) Relate to the correctness or incorrectness of information contained in the document;
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect; or
- (4) Establish that a document purporting to be an exact or conformed copy is in fact an exact or conformed copy.

(e) Conflict with Other Law. Any document which meets the requirements of this Act for filing and recording shall be received, filed and recorded by the appropriate office, upon payment of the appropriate fee and taxes, if any, notwithstanding any contrary requirements found in any other provision of the laws of this state.

**SECTION 48-258-110.**

(a) If the secretary of state refuses to file a document delivered to the office of the secretary of state for filing, the domestic or foreign LLC may appeal the refusal to the chancery court of Davidson County. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

(b) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

(d) Any judicial review of the secretary of state's refusal to file a document shall be conducted in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

#### **SECTION 48-258-111.**

A certificate attached or certification affixed to a copy of a document filed by the secretary of state, bearing the secretary of state's signature (which may be in facsimile) and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

#### **SECTION 48-258-112.**

(a) A person commits a Class B misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500), if the person signs a document, knowing it to be false in any material respect, with intent that the document be delivered to the office of the secretary of state or other required office for filing.

(b) The offense created by this section is in addition to any other offense created by law for the same conduct.

#### **SECTION 48-258-113.**

(a) Except as provided in subsection (b) and §§ 48-250-101, 48-255-102, 48-255-103, 48-255-104 and 48-258-108(c), a document accepted for filing is effective:

(1) At the time of filing on the date it is filed by the secretary of state, as evidenced by the office of the secretary of state's date and time endorsement on the original document; and

(2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth (90<sup>th</sup>) day after the date it is filed with the office of the secretary of state, except in the case of a certificate of merger filed under § 48-255-102] or a certificate of conversion filed under §§ 48-255-103 or 48-255-104].

(c) The office of the secretary of state shall not file any articles or application for a certificate of authority unless that document designates the registered agent and registered office of such domestic or foreign LLC in accordance with § 48-249-109. The office of the secretary of state shall not file any other document presented by the LLC for filing under this Act if at the time of filing the domestic or foreign LLC does not have a registered agent and registered office designated at such time, unless at the time such document is received for filing the office of the secretary of state also receives for filing a statement designating such registered agent or registered office or both.

#### **SECTION 48-258-114.**

In the event that the LLC is prohibited from transacting business in Tennessee by its articles but actually transacts business in Tennessee and but for § 48-258-107(d) it would have

paid a larger filing fee, the LLC shall be fined an amount equal to three (3) times the annual filing fee, less the amount actually paid, for each year or part thereof in which it actually does business in Tennessee.

**SECTION 48-258-115.**

The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this Act, including, without limitation, the power to promulgate necessary and appropriate rules and regulations consistent with this Act, and the power to destroy any records in the secretary of state's office concerning a domestic or foreign LLC ten (10) years after such LLC has terminated, withdrawn from the state, or has had its certificate of authority revoked.

**SECTION 48-258-116.**

An act of a duly authorized deputy of the secretary of state in the secretary of state's behalf under this Act is the equivalent of the act of the secretary of state; provided, that the deputy signs the name of the secretary of state by such deputy as deputy.

**SECTION 48-258-117.**

(a) Each domestic LLC, and each foreign LLC authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report that sets forth:

- (1) The name of the LLC and the jurisdiction under whose law it is formed or organized;
- (2) The street address and zip code of its registered office and the name of its registered agent at that office in this state;
- (3) The street address, including the zip code, of its principal executive office;



(4) If the LLC is director-managed or manager-managed (or its equivalent), the names and business addresses, including the zip code, of its directors or managers (or their equivalent), as applicable;

(5) The names and business addresses, including the zip code, of its officers, if any (or equivalent);

(6) The federal employer identification number (FEIN) of the LLC, or if such number has not been obtained, a representation that it has been applied for; and

(7) If the LLC will have more than six (6) members at the date of filing of the annual report, the number of members of the LLC at the date of filing.

(b) Information in the annual report shall be current as of the date the annual report is executed on behalf of the LLC.

(c) Every LLC shall file the annual report with the secretary of state on or before the first (1<sup>st</sup>) day of the fourth (4<sup>th</sup>) month following the end of the close of the LLC's fiscal year.

SECTION 2. This act shall take effect January 1, 2006, the public welfare requiring it.